









# THE CABINET LAWYER:

A  
POPULAR DIGEST

OF THE

## LAWS OF ENGLAND;

ESPECIALLY THOSE RELATIVE TO THE

Magistracy and Clergy  
Parish Officers and Police.  
Landlords and Tenants  
Masters and Workmen  
Auctioneers and Pawnbrokers  
Innkeepers and Carriers  
Debtors and Creditors  
Doctors and Apothecaries  
Banking and Railway Companies.  
Joint Stock Companies  
Partners  
Army and Navy  
Millers and Bakers  
Stage Coachmen and Guards  
Travellers and Postmasters  
Authors, Publishers and Printers.  
Inventors and Patents  
Factors, Agents, and Brokers  
Game Laws and Sportsmen  
Emigrants and Ship Passengers.  
Tutors and Witnesses.  
Physicians, Surgeons, and Apothecaries.

Barristers, Solicitors, and Attorneys —  
Nuisances and the Public Health.  
Tithes and Common  
Bankruptcy and Insolvency  
Merchant Shipping, and Pilotage.  
Navigation Laws  
Wreck and Salvage  
Marine and Fire Insurance.  
Life Annuities  
Bills of Exchange and Notes  
Cheques, Drafts, Receipts, and Orders  
Award and Arbitration  
Stamp Duties and Assessed Taxes  
Wills, Cohorts, and Legacies  
Tithes and Defamation  
Contracts, Sales and Promises  
Libraries and Museums.  
Friendly Societies and Savings Banks.  
Mortgages and Tithes.  
Reformatory and Industrial Schools  
Civil and Criminal Procedure, &c., &c.,

### The Criminal Law of England;

### A DICTIONARY OF LAW-TERMS,

MAXIMS, STATUTES, AND JUDICIAL ANTIQUITIES.

CORRECT TABLES OF ASSISTED TAXES, STAMP AND HOUSE DUTIES,

TACIT LICENCES, AND POSTHORSE DUTIES,

POST OFFICE REGULATIONS AND PRISON DISCIPLINE;

ALSO

COSTS, FEES, AND CHARGES IN SUPERIOR AND  
COUNTY COURTS.


SUPPLEMENT OF THE ACTS OF SESSIONS, 1857.\*

SEVENTEENTH EDITION,

*Extended and Corrected throughout; with the Statutes and Legal  
Decisions to Michaelmas Term, 20th and 21st Victoria.*

"I wish every man knew as much law as would enable him to keep himself  
out of it"—LORD BACON.

LONDON:

LONGMAN, BROWN, GREEN, LONGMANS & ROBERTS. 



## PREFACE TO THE SEVENTEENTH EDITION.

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THE close of every year brings a fresh promulgation of laws and acts of Parliament, but by the steady demand for our publication we are enabled to keep pace with the unceasing progress of legal change and amendment. By careful revision, and the entire reprinting of this, the seventeenth edition of the *CABINET LAWYER*, an effort has been made to bring the important improvements in statute law and judicial procedure correctly up to the close of the current year. For this purpose many additions and alterations have been requisite, in order to present a popular and complete transcript of the Civil, Criminal, Equity, and Constitutional laws of the realm, as now administered.

The brief period which has elapsed since the publication of the former impression has been remarkable for endeavours in the Legislature to consolidate the laws in force, and amend them by new enactments, and render both more precise, comprehensive, and intelligible. Among the later statutes of general import which have been incorporated, and their provisions sought to be explained, are those pertaining to Merchant Shipping and the Navigation Laws, to Partnerships and Joint-Stock Companies, to Bills and Notes, Cheques and Bankers' Drafts, the Stamp Duties on Newspapers and Receipts. The Marriage and Registration laws have undergone material changes, especially in Scotland. The obstructions to Trade and Commerce between the three divisions of the United Kingdom, from the existence of dissimilar usages and customs in respect of bills of exchange, the relation of seller and buyer, and of guarantees, have been sought to be obviated by assimilating the commercial laws of England, Ireland, and Scotland.

In judicial administration, the changes introduced into the law of Evidence, and those for extending the jurisdiction of the County Courts, and for lessening the expense and delay in criminal justice form the noticeable improvements. Connected with, and auxiliary to these, are, the acts for the better organization and efficiency of the Police, both in the metropolis and the counties and boroughs of the kingdom; the acts for the Local Management of London, for the preservation of the Public Health by the establishment of extramural Cemeteries, and the removal of Nuisances, for the Suppression of Betting Houses, and the better supervision of Lodging Houses, are salutary measures in the same direction. The laudable attempts made to establish Reformatories and Industrial Schools, by which juvenile offenders are sought to be arrested in a criminal career, may be also reckoned among the new enactments of the present edition, as well as those pertaining to Free Libraries and Museums.

A leading feature of recent legislation has been the effort to reform and extend the utilities of the national universities of Oxford and Cambridge, and abolish exclusive tests in those of Scotland. Among other acts of an imperial character may be included those for the Better Government of British India, and the prevention of bribery and corruption in the election of the members of Parliament.

In the DICTIONARY, besides corrections, several new terms and additional miscellaneous information have been introduced, together with the alterations in the Revenue Laws and General Post Office Regulations. In the Appendix are comprised the Tables of Fees in the Superior Courts, the Tables of Costs settled by the Judge, Allowances to Witnesses, and the new scale of Costs and Charges in the County Courts.

*Michaelmas Term, 1856.*

J. W.

## PREFACE TO THE FIRST EDITION.

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THOSE who have attended to the details of administrative justice cannot fail to have remarked that the great mass of litigation results not more from the uncertainty of the law, than the absence of the legal information which ought to be within the reach and comprehension of every member of the community. Of the questions brought forward for the adjudication of a public tribunal, a large proportion are referable to clear and settled determinations of law, with which the parties themselves ought to have been apprized, without the delay, expense, and anxiety inseparable from judicial procedure.

A principal object of the present undertaking has been to lessen the occasions for an appeal to the Courts of Law; and secondly, to render accessible to unprofessional readers a knowledge of the institutions by which individual rights, persons, and properties are secured.

As the primary design was a Popular Digest of the Laws of England, my first object has been compression and simplicity; the former I endeavoured to attain by strictly avoiding everything extraneous to a distinct elucidation of the immediate question; the latter, by divesting the subject of technical obscurity, combined with an arrangement which I think will be found as natural and convenient as the English laws will admit.

The work is divided into six Parts, and each part is subdivided into chapters and sections. The *First* Part comprises the chief points in the origin and jurisdiction of the laws of England, and in the institutions and government from which they have emanated. *Next* follows the Administration of Justice, including a brief account of the courts of law, the mode of civil and criminal procedure, the constitution of juries, and the nature of evidence. The *Third* Part embraces the laws affecting Classes, comprising the laws and regulations principally bearing on the social and domestic relations of life, and exclusively referring to particular descriptions of individuals; as the Clergy, Justices, Sheriffs, Parish Officers, Innkeepers, Travellers, Postmasters, Carriers, Pawnbrokers, Dissenters and Roman Ca-

**Wholly, Executors, Working Classes, Trustees, Author and Publisher, Partners, Banking and Joint Stock Companies, Master and Servant, Landlord and Tenant, Principal and Agent.**

Having stated the laws which affect persons in public and parochial offices, in their professions, trades, and occupations, and in their domestic and social relations, we come next to those that affect their possessions; this forms the *Fourth Part*, embracing the incidents connected with the inheritance, possession, and conveyance of property under the heads of Wills and Codicils, Tithes, Contracts, Bills of Exchange, Bankruptcy, Assignment, Mortgage, Liens, Insurance, Insolvency, Game Laws, &c.

*Next* follows the consideration of Civil Injuries, or those minor offences, as Libel, Seduction, Trespass, and Slander, which affect the character or infringe the rights of individuals, but do not directly endanger the peace and security of the community.

The *Sixth* and concluding Part refers to Crimes and Punishments, being a digest of the criminal law of England, and of the consequences and penalties of public offences. Great and salutary changes have been recently introduced into this department of the judicial system; among others, the speedier trial of misdemeanors has been facilitated, and the severity of their punishment augmented; the number of capital offences has been diminished, and milder and more reformatory modes of punishment substituted; punishments unsuited to the feelings of the age, as that of the pillory, and the burning or whipping of females, have been abolished, and parts of others, as the disembowelling of traitors, and the ignominious burial of suicides on the highway, rescinded; corruption of blood has been limited to treason and murder; the barbarous exhibition of appeals in treason, murder, and felony, has been suppressed, and the trial by battle in civil suits; lastly, provision has been made for defraying the expenses of prosecution, both in cases of misdemeanor and felony; and the peremptory estreating of recognizances, which often occasioned hardship to individuals, has been placed under suitable restraint.

To the conclusion is added a Dictionary of Law-Terms, Maxims, Acts of Parliament, and Judicial Antiquities, which could not be properly incorporated into the body of the work, yet it was necessary to include them, to comprise an entire and

intelligible Digest of the Laws of England. In this department, too, is condensed a great variety of recent statutes, a knowledge of which is more or less essential to every person ; especially the acts relative to the Post-Office, Assessed Taxes, Turnpikes, Stamps, Customs, Excise, Navigation and Commerce, Bread, Coals, and other subjects, correct information on which can hardly be anywhere procured in a collective form, and never without considerable cost and inconvenience.

The public is so accustomed to bulky works on law, that a doubt may naturally arise of my ability adequately to treat the various subjects of the present volume in so small a compass. On this point I will endeavour to satisfy the reader. Of the mechanical art employed, a glance at the smallness of the type, and the closeness of the pages will suffice ; of the intellectual craft, a little more explanation may be requisite.

It has often been remarked into how small a compass human knowledge might be compressed, by confining it to a simple enunciation of facts and principles. It occurred to me that this mode of procedure might be applied, with peculiar advantage, to a digest of the English laws, and it is by rigorously adhering to it I have been enabled to accomplish the present undertaking. My aim, throughout, has been to concentrate, almost in an aphoristic form, *facts* and *legal points* only, exhibit them in popular language, under such arrangement and classification as would afford the utmost facility for turning to and obtaining the information necessary to the immediate object of research.

I will not conceal the design occurred to me from remarking the defects of the popular treatises on law already extant, and a conviction (perhaps a vain one) that I could produce something better. The publications bearing any analogy to the present are chiefly abridgments of Sir William Blackstone, which, from alterations in the Statute Book and the accumulating decisions of the Courts, have been rendered comparatively useless. It is true, attempts have been made to supply their defects, by publishing new editions, consisting, for the most part, of one or two additional sheets or notes, so that a great portion of the text retains laws and determinations that have long ceased to be English Law.

Of the omissions in works of this description one instance may suffice. The law of copyright, not only from the pecuniary value of literary productions, but the number of per-



Persons interested therein, has become of the utmost importance; yet, in two publications of the nature alluded to, there is not the slightest notice of the existence of this species of property, or of the laws by which it is protected.

Since the peace, the Legislature has been sedulously occupied in revising the Statute Law; much remains to be done, but a great deal has been accomplished. The late parliament, previous to its dissolution, had repealed, modified, or consolidated upwards of 1000 statutes. The 3 G. 4, c. 41, repeals upwards of 200 statutes, or parts of statutes, relative to the export and import of merchandise, the commerce of aliens and denizens, the gauging of wine and other mercantile regulations. The Custom-Law consolidates 450 acts of parliament into one: the Jury Act, 30; the Bankrupt Act, 20; and the law for improving the administration of Criminal Justice, some 60 or 70. These changes have been carefully attended to; the old laws repealed have been remarked; and when an act referred only to a particular class, and consequently did not fall within the general nature of the publication, I have indicated the most recent law on the subject, for the convenience of those more especially interested therein.

In analyzing a statute, I have not invariably followed the order of the statute itself; the framers of acts of parliament do not always adopt the most lucid arrangement, and, consequently, instead of following them from section to section, I have fairly dissected the subject-matter, embodying the scattered clauses in separate and distinct sections: this appeared to me the best method for the general reader, and its utility will be more particularly observable in the digest of the Bankruptcy and Insolvent Laws.

Having thus endeavoured to give the reader an idea of the plan and mode of execution of the work, I have only to solicit indulgence for errors, perhaps inseparable from undertakings of this nature. To those acquainted with the complex and confused state of the English laws, no apology will be requisite, either for sins of omission or commission. And, generally, when defects are discovered, it will be fair to bear in mind the novel plan of the publication, and the many points of superiority it possesses over others of similar character.

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# THE CABINET LAWYER.

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## PART I.

### GOVERNMENT AND LAWS OF ENGLAND.

LAW is a rule of conduct, sanctioned by authority, by which certain acts are either enjoined or prohibited.

The primary object of law is the protection of individuals, of property, and of the institutions of society.

The origin of laws, the nature of the institutions from which they have emanated, and the relations subsisting between the Government and the People, naturally form the first objects of inquiry. These subjects will occupy the first division of this work, and be classed under the following heads:—

I. *Origin and Jurisdiction of the Laws of England.*

II. *Constitution and Government of England.*

III. *Rights of the People.*

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## CHAPTER I.

### *Origin and Jurisdiction of the Laws of England.*

THE laws of England, like those of most countries, established in an early period of society, consist of a series of customs and obligations resulting from experience, and confirmed by judicial decisions, or framed and corrected by the Legislature. The three principal divisions of the laws, which are dispensed by the judges and magistrates, are the Common, Statute, and Equity Law.

The Common or Unwritten Law comprises those customs and observances which have not been formally created and re-



corded by the Legislature, but have acquired a binding force by immemorial usage, and the strength of general accordance and reception. It is by general custom, or common law, that proceedings are guided in courts of justice; that the eldest son inherits from his father; that property may be purchased and transferred by writing; that a deed is void, if not sealed and delivered; that money lent upon bond is recoverable by action of debt; that the property of a woman by marriage becomes the property of the husband, and the husband liable for the debts of his wife; and that breaches of the peace are punishable by fine and imprisonment: all these are doctrines not prescribed by any written statute or ordinance, but depend on *immemorial usage*, or common law, for their support.

By *immemorial usage* is not meant a period so remote as to be beyond historical record; the bounds of legal memory are limited, by the 3 Edward 1, to the commencement of the reign of Richard I., from which time an uninterrupted custom acquires legal validity. But, as this rule has been often productive of injustice, it is provided by 2 & 3 W. 4, c. 71, that no right of common shall be defeated after thirty years' enjoyment, and after sixty years the right is deemed absolute and indefeasible, unless had by consent or agreement. In claims of right of way or other easements, the periods are twenty and forty years. Claims to the use of light to any dwelling-house or building enjoyed for twenty years, are indefeasible, unless shown to have been by consent.

Besides general customs, there are *local* customs, whose jurisdiction is limited to the particular district in which they are found; such as the customs of the city of London, of copyhold manors, of gavelkind in Kent, and of borough-English at Stafford and other places.

The Civil and Canon Laws, which govern the proceedings of the ecclesiastical, the admiralty, and the military courts, form branches of the Unwritten or Common Law not enacted by Parliament.

The Written or Statute Law consists of statutes, acts, or edicts, made by the sovereign, or by the two houses of parliament, with the assent of the sovereign, of which the original authority is in writing.

The oldest written law now extant, and printed in the statute-book, is Magna Charta; though, doubtless, there were many acts before that time, the records of which are lost, and the maxims of which have been gradually incorporated into the common law.

The interpretation of the statutes and maxims of the common law is determinable by the judges, whose knowledge therein arises from study and experience; from the perusal of the statutes, records of pleas, books of reports, and the tractates of

learned men. Where the common law and the statute differ, the common law gives place to the statute; and an old statute gives place to a new one, upon the general principle that, when contradictory, posterior abrogate prior laws. When a decision has once been made on any point, it is an invariable rule to determine it in the same way again, unless the precedent can be clearly proved erroneous; judges being sworn to decide not according to their private opinions, but according to the known laws and customs of the realm.

Superior or supplemental to the common and statute law, is EQUITY, whose office is to detect latent frauds and concealments which the process of the ordinary courts cannot reach; to enforce such matters of trust and confidence as are binding in conscience, though not cognizable in a court of common jurisdiction; and to give a specific relief, more adapted to the circumstances of the case than can always be obtained by the rules and provisions of the positive law.

These functions of courts of equity are limited to cases of *property*; for the nature of our institutions will not permit that, in criminal matters, which involve the personal security of individuals, a power should be lodged in any judge to construe the laws otherwise than according to the letter and established authority. And it may be further observed, that the jurisdiction of equity has lost much of its original character of arbitrary interference where the law was harsh or silent. From the effects of time and precedent, its rules and decisions have become *fixed laws* themselves; sometimes supplying, sometimes controlling, as accident or occasion may have directed, the institutes of common and statute law.

Lastly, the countries to which the laws extend require to be noticed. The *jurisdiction* of the common law, except as provided by statute, is limited to the territory of England, and does not include either Wales, Scotland, Ireland, or any other part of the empire. It is only by a statute of 27 Henry 8 that Wales is made subject to the common law and all the other laws of England. All acts of parliament subsequently made comprehend Wales and Berwick-upon-Tweed, whether specially named therein or not. But Guernsey, Jersey, Alderney, Sark, and the Isle of Man, are not comprehended in a statute, unless specially mentioned. Since the union with Scotland (May 1, 1707), all statutes of a general nature extend to that kingdom; or, if not included, the method is expressly to declare that the act does not extend to Scotland. In like manner, since the union with Ireland (Jan. 1, 1801), all statutes of a general nature extend to that kingdom, unless expressly excepted, or the provisions of the act are such as clearly do not apply to, or cannot be executed in Ireland.

As to the kingdom of Hanover and other hereditary territories

belonging to the ancestors of her present majesty, they never in any wise appertained to the British crown, and were always, as provided by the Act of Settlement, unconnected with the laws and government of England : and this severance is rendered more complete during the present reign, by the German States descending to a *male* branch of the Brunswick family ; and queen Victoria, by the operation of the Salic law of Hanover, having been precluded from succeeding to the throne of that kingdom.

## CHAPTER II.

### *Constitution and Government of England.*

THE supreme power in England is divided into the two branches of the legislative and executive ; the former consists of the sovereign, the lords, and commons, in parliament assembled ; the latter consists of the sovereign only.

There is little doubt that parliaments, or general councils of the crown, are coeval with the establishment of the kingdom. But the constitution of parliament, as it now stands, was more clearly defined in the year 1215, by Magna Charta, granted by king John, in which he promises to summon the clergy, nobility, and commons to meet at a certain place, with forty days' notice, to assess aids and scutages, when necessary. The constitution so promulgated has clearly subsisted from the year 1265, 49 Hen. 3, there being still extant writs of that date, to summon knights, citizens, and burgesses to parliament.

The parliament is summoned by the queen's writ, or letter, issued out of chancery, formerly forty, but after the union with Scotland, fifty days before it begins to sit. But the time required to intervene between the date of the proclamation for assembling parliament and the day appointed for the meeting thereof, was shortened in 1852 by 15 V. c. 23, enacting that the time for the first meeting of parliament after a dissolution, may be any time not less than *thirty-five* days from the date of such proclamation. It is a branch of the royal prerogative that no new parliament can be convened by its own authority, or by the authority of any except the queen only. But on the demise of the monarch, if there be no parliament in being, the last revives, and continues for six months, unless sooner prorogued or dissolved by her successor. And in case of the queen's demise on or after the day of assembling a new parliament, such new parliament shall meet and sit, subject in like manner to the will of her successor.

A parliament may be holden at any place the queen may assign ; and she may issue her proclamation for the meeting of

it in fourteen days from the date, notwithstanding a previous adjournment to a longer period.

The power of proroguing and dissolving, as well as summoning parliament together, is vested in the crown. When it is resolved that parliament shall meet and sit on the day to which it is prorogued, notice is given by proclamation. And the language of the proclamation itself varies, so as to indicate a determination that the session shall then actually commence, the words "then and there to meet *for the despatch of business*" being included, which are omitted when it is not intended to meet on the day named.

Whether by the statute of 4 E. 3, c. 14, it is meant that parliament should be held *once* a year, or oftener, *if need be*, is not decided; nor is it very material now to inquire, because the Mutiny Act, the grant of supplies for the army and navy, and some other bills being passed annually, it has become necessary for parliament to assemble *once* at least in every year; and the prorogation at the end of the session is in practice only for a limited time within the year; and, when that period expires, it is prolonged or not, according to the exigencies of the public service.

Every parliament must be opened either by the queen in person, or by her commission or representative.

The power and jurisdiction of this body are so great as to have been styled omnipotent. Its authority extends over the whole of the United Kingdom, and all its colonies and foreign possessions. It has sovereign and uncontrollable authority in the making of laws. It can regulate and new-model the succession to the crown, as was done in the reigns of Henry VIII. and William III.; it can alter the established religion, as was done in the reigns of Henry VIII. and his children; it can change even the constitution of the empire, and of parliament itself, as was done in the acts of union with Scotland and Ireland, and the several statutes for triennial and septennial elections, and for the reform of the representation of the people, under William IV.

No one can sit and vote in Parliament unless he be twenty-one years of age. Nor is an alien, though naturalized, capable of being a member of parliament. But by 3 V. c. 1 & c. 2, the consort of the queen, Prince Albert, is relieved of alien disqualifications, and in all respects made a natural-born subject.

#### PRIVILEGES OF PARLIAMENT.

The privileges of parliament were principally intended to protect its members, not only from being molested in the discharge of their legislative duties by their fellow subjects, but more especially from being oppressed by the power of the crown.

By the 1 W. & M. st. 2, c. 2, it is declared, "that freedom of speech, debate, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament." But this extends only to speeches *in parliament*; for, if a peer or member of the house of commons *publish* a speech calumniating another, he is liable to be sued or indicted.

The privilege from arrest in civil causes is in a peer perpetual; and in a commoner, during the sitting of parliament, and for forty days after its prorogation, and for forty days before the next appointed meeting; which is, in effect, as long as the parliament subsists, it seldom being prorogued for more than eighty days at a time.

But the privilege of parliament does not extend to treason, felony, breach of the peace, or any indictable offence; and in civil suits the law only protects the *persons* of members from arrest, not their property from sale or execution. They are, also, if in trade, subject to the bankrupt laws; and any trader, having privilege of parliament, committing an act of bankruptcy, a petition may issue against him, and persons acting under it proceed thereon in like manner as against any other bankrupt.

Thus much for the parliament, in its aggregate legislative capacity: it will next be proper to speak more particularly of its constituent parts—namely, the queen, lords, and commons.

### CHAPTER III.

#### *The Sovereign.*

THE supreme executive power is vested in a single person, either king or queen; and the person entitled to it, whether male or female, is invested with all the ensigns and prerogatives of sovereignty.

The right of succession is, by custom, hereditary, but this right of inheritance may be changed or limited by the parliament; under which limitation the crown still continues hereditary; that is, descendible to the next heir, being Protestant, male or female. Hence it is that the king is said *never to die*; but on the death of one sovereign the king survives in his successor.

#### SOVEREIGN'S COUNCILS.

These consist of the high court of parliament, the *peers* of the realm, the *judges*, and the *privy council*.

The *peers* are, by their birth, hereditary counsellors of the crown, and may be summoned to impart their advice in all

matters of importance to the kingdom ; or, they may individually demand an audience of the queen, and respectfully lay before her majesty such matters as they judge important to the public welfare.

The *judges* are the queen's counsellors in matters of law, and are required to advise the crown in all affairs of legal difficulty : this office is now usually discharged by the attorney and solicitor general of her majesty.

Until the rise of the Cabinet, the most responsible and influential advisers of the crown in state affairs were the *privy council*. The number of its members is indefinite, and at the pleasure of the queen ; but they must be natural-born subjects. By 6 Anne, c. 7, they sit during the life of the queen, who nominates them, subject to removal at the royal discretion. On the demise of the crown, they continue for six months, unless sooner determined by the successor.

Formerly, a privy councillor enjoyed privileges in respect of personal security, but these were abolished by 9 G. 4, c. 31 ; and any offence against a privy councillor stands on the same footing as offences against any other individual. By his oath he is bound to advise the queen without partiality, affection, or dread ; to keep her counsel secret, to avoid corruption, and to assist in the execution of what is there resolved. The council has power to inquire into all offences against government, and commit the offenders to take their trial in some court of law. In matters of property belonging to subjects, in this kingdom, the privy council cannot take cognizance ; but in colonial and maritime causes arising out of the kingdom, and in cases of lunacy and idiocy, though they involve questions of property, the privy council may take cognizance, being the court of appeal. In the exercise of its appellative functions, the council is assisted by a recent institution, called the Judicial Committee of the Privy Council, of which notice will be hereafter taken, and which comprises the chief law authorities of the kingdom.

By 19 & 20 V. c. 116, the queen, by warrant under the royal sign manual, may appoint any member of the privy council to be, during pleasure, vice-president of the committee of council on education, with a salary not exceeding £2000.

That portion of the privy council usually denominated the CABINET does not properly form a recognised part of the ancient constitution of England. In practice, however, it is the most important branch of the government, comprising the great public officers and ministers of state, who constitute the really efficient and responsible servants and advisers of the crown. They are, in fact, the executive government of the kingdom, pending the time they hold office, which is usually so long as they can command a majority of the house of commons.

The number and selection of the cabinet council depend on

the queen's pleasure, under the advice of the prime minister whom she may have chosen to form an administration; and each member receives a summons or message for each attendance. In like manner, no privy councillor attends, unless individually summoned for the particular occasion on which his assistance in council is required.

#### DUTIES OF THE SOVEREIGN.

By the oath administered at the coronation, the sovereign solemnly promises to govern according to the statutes, the laws, and customs of the realm; to cause law and justice, in mercy, to be executed in all her judgments; to maintain the laws of God, the profession of the gospel, and the Protestant reformed religion and the church, as by law established. This solemn engagement is considered a fundamental and express contract between the sovereign and the people.

#### ROYAL PREROGATIVES.

By the royal prerogatives are meant certain privileges enjoyed by the queen regent, in virtue of the regal office.

The queen is the supreme magistrate of the nation, all other magistrates acting by commission from, and in due subordination to her; she has the exclusive right of sending ambassadors, of creating peers, of making war and peace; she may reject any parliamentary bill she pleases; and pardon any offences, except where the law has specially interfered. The royal pardon cannot be pleaded in an impeachment, but it may be subsequently given; nor can the crown remit fines to which informers have claim.

No suit or action can be brought against the queen, even in civil matters. If any one has a demand on the queen in point of property, he may petition the court of chancery, where the lord chancellor will administer right as a matter of grace, and not of compulsion.

No delay will bar the right of the queen. In civil actions, however, relating to landed property, the queen, like a subject, is limited to sixty years; and, after fifty-five years' possession, a grant from the crown may be presumed, unless a statute has prohibited such a grant, *Parker v. Baldwin*, 11 E. R. 488.

It is a maxim, the sovereign *can do no wrong*. If the queen be induced to make any improper grant to a subject, or be guilty of any act of public oppression, it is presumed she has acted under the influence of weak or wicked ministers, who may be punished by indictment, or parliamentary impeachment.

The sovereign is not bound by any statute, unless expressly named therein; yet, if a public act be made which does not in-

terfere with the rights of the crown, it is said to be as binding upon the queen as upon the subject; and though she be not specifically named in any act, her majesty may, if she please, take the benefit of it.

The queen cannot be a joint tenant, and it is provided that her debt shall be preferred before any of her subjects. Up to 1855, the crown, except in certain fiscal cases, neither recovered nor paid costs; but this practice is abolished by 18 & 19 V. c. 90; and the crown in all suits, if successful, may recover costs, as between subject and subject, and the defendant, if successful, is entitled to costs against the crown.

The queen is the head of the *army and navy*, and has the control of all forts and garrisons within the realm. She has the power of establishing ports and havens. She may prohibit the importation of arms and ammunition, and confine her subjects within the realm, or recall them from abroad, on pain of fine and imprisonment.

She is the head of the *established church*, and has power to convene, prorogue, and dissolve the houses of convocation. In virtue of this prerogative arises the right to nominate to vacant bishoprics and other ecclesiastical preferments. She is the dernier ressort in all spiritual matters, an appeal lying to the judicial committee of the privy council from the sentence of every ecclesiastical judge.

The queen has the right of granting passports to subjects of different nations. In the regulation of domestic trade, she has the prerogative of establishing markets and fairs with tolls, of regulating weights and measures, of giving authenticity to the coin, and making it current as the universal medium of exchange.

The queen is the *representative of the public*, and criminal proceedings for offences are in her name. She has the power of erecting courts of judicature, but cannot administer justice personally, since she has delegated that power to her judges.

Lastly, the queen is the *fountain of office, honour, and privilege*. All degrees of title are by her immediate grant. She has the right of granting precedence to any of her subjects, except to the nobility, whose precedence is fixed by statute; of converting aliens into denizens, and of erecting corporations.

By 1 V. c. 72, in case of her majesty's death, the archbishop of Canterbury, lord chancellor, lord high treasurer, lord president of the council, lord privy seal, lord high admiral, and the chief justice of the queen's bench, are appointed lords justices to exercise the regal powers until the arrival in the kingdom of the next successor to the crown, provided such successor is absent at the time of the queen's decease. Lords justices are not empowered to create peers nor dissolve parliament.



## REVENUES OF THE CROWN.

The queen's, or more correctly the public, revenue is either *hereditary* or *parliamentary*. The *hereditary* revenue is that which has subsisted in the crown, time immemorial; or else has been granted by parliament in exchange for such crown revenues as were found inconvenient to the public. The *parliamentary* or *general* revenue is the various taxes levied by the authority of parliament.

Of the *hereditary revenues* the principal are—1. The lay revenues of vacant sees, the first-fruits and tenths of spiritual preferments, and all tithes arising in extra-parochial places. 2. The demesne lands of the crown, consisting of estates, woods, forests, manors, honours, and lordships. 3. Fines, forfeitures, and fees, arising from courts of justice. 4. A tenth part of *royal fish*, which are whale and sturgeon, when either thrown on shore or caught near the coast. 5. Mines of gold and silver. 6. Treasure-trove, which is the treasure found hid in the earth, of which no owner appears: but it seems, from *Armory v. Delamere*, this does not extend to treasure, as gold, diamonds, money, or other valuables found in the sea, or upon the earth; which belong to the finder, if no owner appear. 7. Waifs, which are goods stolen and thrown away by the thief in his flight; but the courts may, by 7 & 8 G. 4, c. 29, order restitution of waifs, or other stolen goods, to the owner. 8. Estrays, or animals found wandering, the owner of which is unknown. 9. Lands and goods forfeited for offences; and escheats of land, which happen on defect of heirs to succeed to the inheritance; but by 3 & 4 W. 4, c. 106, lands forfeited by attainder do not prevent inheritance. 10. Droits of the crown and admiralty; being the proceeds of wrecks and goods of pirates. 11. The revenues of the duchies of Cornwall and Lancaster, pending the infancy of the Prince of Wales. Lastly, the profits accruing from the custody of the property and persons of idiots and lunatics.

Most of these branches of the hereditary revenues have fallen into desuetude, or have been granted to private individuals, or placed at the disposal of the Legislature; so that, except the duchies of Cornwall and Lancaster, they add little or nothing to the royal income. In lieu of the hereditary revenues of the crown, a fixed annual sum, under the denomination of the *civil list*, is granted by parliament at the commencement of a new reign for the support of the sovereign and the royal household. This sum is payable out of the *parliamentary* revenue, or that great mass of public income arising from the various taxes imposed by parliament, and a great portion of which is applied to the payment of the interest of the public debt, the maintenance of the army and navy, the

administration of justice, and other matters connected with the national government.

## THE QUEEN AND ROYAL FAMILY.

The queen is either queen *regent*, queen *consort*, or queen *dowager*. The queen *regent*, or *regnant*, is she who holds the crown in her own right, as queen Elizabeth, queen Anne, or queen Victoria: such a one, in her public capacity, in all respects fills the office of king, having the same rights, prerogatives, duties, and dignities; and all that has been or may hereafter be said of the functions of the regal office, may be considered as applicable and pertaining to her present majesty as sovereign of the realm.

The queen *consort*, or wife of the king, is a public person enjoying peculiar privileges. She can purchase land and make leases without the concurrence of her lord; she can also take a grant from her husband, which no other wife can; she may also sue and be sued alone, without joining her husband. In short, she is in all legal proceedings considered a single, not a married woman: and the common law has established this to prevent the king being troubled with his wife's private affairs.

To violate the queen's person is high treason, as well in the violator as the queen herself, if consenting.

A queen *dowager* is the widow of the preceding king, and as such enjoys most of the privileges to which she was entitled as queen consort. But it is not high treason to conspire her death, or to violate her chastity, because the succession to the crown is not thereby endangered.

The husband of a queen regent, as prince George of Denmark was to queen Anne, or prince Albert to queen Victoria, is her subject, and may be guilty of high treason against her; but, in the instance of conjugal infidelity, he is not subject to the same penal restrictions. For which the reason seems to be, that, if a queen consort is unfaithful to the royal bed, this may debase or bastardize the heirs to the crown; but no such danger can issue from the infidelity of the husband to a queen regent.

The *Prince of Wales*, or heir apparent to the crown, and his consort, and also the princess royal, or eldest daughter of the queen, are peculiarly regarded by the laws. To conspire the death of the former, or violate the chastity of the latter, is high treason.

By the rest of the *royal family* is understood the younger sons and daughters and other relatives of the sovereign who may possibly inherit the crown, though not immediately in the line of succession. These have precedence before all peers and officers of state, ecclesiastical or temporal. The education of

the presumptive heir to the crown is under the control of the sovereign; and no prince of the blood can marry without the sovereign's consent, unless he be twenty-five years old; nor even then, without twelve months' notice being given to the privy council; or if, in the course of these twelve months, parliament expresses its disapprobation of the marriage. A marriage otherwise entered into will be void: the minister, and all persons present incurring the penalties of *præmunire*.

## CHAPTER IV.

### *House of Lords.*

THE house of lords forms the second or hereditary branch of the constitution; they are either *spiritual* or *temporal*: the former consist of the two archbishops and twenty-four bishops of the English church, and one archbishop and three bishops of the Irish church; the latter have been elected, since the union, by rotation of session, to represent the clergy of Ireland. The spiritual lords are not considered peers, but merely lords of parliament, who hold, or are supposed to hold, certain ancient baronies under the king.

The *lords temporal* consist of all peers of the realm, being of full age and not mentally incapacitated: the number of these may be increased at the pleasure of the crown. Sixteen temporal peers are chosen by, and sit as representatives of, the peers of Scotland: twenty-eight represent the nobility of Ireland. Scotch peers are elected only for one parliament; the Irish peers for life; the rest of the peerage hold by descent or creation.

That the queen may be informed of the decease of a representative peer, in order to the election of another, the 14 & 15 V. c. 87, provides that a certificate from two peers of Scotland shall be held to be formal notice of the death of any representative peer, sufficient for the issue of a proclamation for the election of his successor. Owing to increased facilities for communication, the time for the issue of the proclamation, prior to the election, is reduced from twenty-five to ten days. By s. 3, Scotch peers may take the oath, and subscribe the declaration in order to vote by proxy in the superior courts of law in Ireland, same as in England. Titles of peerages, in right of which no vote has been given for fifty years, not to be called at election, if the house of lords shall so direct.

The total number of members of the house of lords, in 1855, was 448, and comprised the subjoined classes:—

Princes of the blood royal . . . . .	3
Dukes . . . . .	20
Marquises . . . . .	21
Earls . . . . .	112
Viscounts . . . . .	22
Barons . . . . .	195
Peers of Scotland (elected 1852) . . . . .	16
Peers of Ireland (elected for life) . . . . .	28
English archbishops and bishops . . . . .	26
Irish representative ditto . . . . .	4
Total . . . . .	<hr/> 447 <hr/>

## FUNCTIONS AND PRIVILEGES.

The house of lords has two distinct functions, the *legislative* and *judicial*. Its legislative functions it exercises in concert with the sovereign and the house of commons, and every new statute must have the assent of the crown and a majority of each house of parliament. In its judicial capacity, the house of lords is a court for the trial of criminal offences on impeachment by the commons, and of peers on indictments found by a grand jury. The lords may require the attendance of the judges of the superior courts of law to advise them in their judicial duties.

A peer may vote by proxy, which is a privilege denied to the members of the commons; but in judicial causes, or in committees, a peer cannot vote by proxy.

All bills that in any way affect the rights of the peerage must originate in the house of peers, and undergo no change or alteration in the commons.

Each peer has a right, by leave of the house, when a vote passes contrary to his sentiments, to enter his dissent on the journals of the house, with the reasons of such dissent; which is styled his *protest*.

A peer sitting in judgment gives not his verdict upon oath, like a commoner, but upon his honour. He answers also bills in chancery upon his honour, and not upon his oath. But when he is summoned as a witness, either in civil or criminal cases, he must be sworn. In criminal trials, on arraignment, he is not required, like other culprits, to *hold up his hand*. In civil actions, his house cannot be searched by the sheriff without the authority of a royal warrant. He is privileged to sit covered on the bench in courts of law, and to give his opinion to the judge. He is exempt from civil offices, but may exercise the power of a justice of peace in any part of the kingdom, where he happens to be present.

Peers are created either by *writ* or by *patent*. The creation

by writ, or the queen's letter, is a summons to attend the house of peers by the style and title of the barony which the queen is pleased to confer; that by patent is a royal grant to the subject of any dignity and degree of peerage, as baron or viscount.

When a peer of the realm is newly created, he is introduced into the house of peers by two lords, of the same form, in their robes, garter king at arms going before; and his lordship is to present his writ of summons, &c., to the lord chancellor, which being read, he is conducted to his place. Lords by descent are introduced with the same ceremony, the presenting of the writ excepted; but lords by descent, of the age of 21, may sit without introduction. *May on Parl.* 136.

## CHAPTER V.

### *House of Commons.*

THIS forms the third and popular branch of the legislature, representing the commons of the United Kingdom.

All grants for raising the supplies to meet the expenditure of government must originate in and pass the house of commons, though they cannot have the force of law without the assent of the other two branches of parliament.

The lords may reject the grants of the commons altogether, if they think them too lavish, but cannot make the least alteration or amendment in a *money-bill*; under which appellation is included all sums directed to be raised on the people for public purposes. And this rule is now extended to bills for canals, paving, provision for the poor, and to every bill in which tolls, rates, or duties are ordered to be collected; also to bills in which pecuniary penalties and fines are imposed for offences. *3 Hats.* 110.

#### QUALIFICATIONS OF MEMBERS.

It is not every man that is qualified to be chosen a member of the house of commons.

They must not be minors, lunatics, outlaws, nor aliens born.

They must not be of the fifteen judges, because they sit, if summoned, in the house of lords; nor of the clergy, for they sit in convocation; nor persons attainted of treason or felony.

The three vice-chancellors are excluded from the house of commons, though the master of the rolls is not.

Sheriffs of counties, mayors and bailiffs of boroughs, are ineligible in their respective jurisdictions; but sheriffs of one county are eligible to be knights of another, or burgesses of boroughs; mayors and bailiffs for places of which they are not the returning officers.

No person concerned in the management of any duties or

taxes created since 1692 (except commissioners of the treasury); nor any officer of the excise, customs, stamps, &c. ; nor any person holding any new office under the crown, created since 1705, is capable of being elected a member.

Pensioners under the crown, during pleasure, or for a term of years, are excluded. But a pension received by the wife does not disqualify the husband. *Corb. Dan.* 114.

Any member accepting an office of profit under the crown, which existed prior to 1705, vacates his seat; but such member is capable of being re-elected.

Residence has ceased to be requisite to qualify a member of the house of commons. But no person is qualified to be elected member for any county in England, Wales, or Ireland, unless possessed of real or personal estate in some part of the United Kingdom for his own or another's life, or for a term of years of which not less than thirteen is unexpired, of the clear yearly value of £600; or for a city, borough, or cinque-port, unless possessed of similar qualifications to the amount of £300: except the eldest sons of peers, or of bishops. But no *property* qualification is requisite to represent one of the universities. Neither is a property qualification required in Scotland, not even that of an elector, which was requisite prior to the Reform Act of 1832. False declaration as to qualification is punishable as a misdemeanour, and the election void, if the member sits or votes before complying with the provisions of the act. 2 V. c. 48.

Contractors with government are ineligible to sit in parliament; and, if any person so disqualified shall sit in the house, he shall forfeit £500 per day. And, if any person who contracts with government admits any member of parliament to share in it, he shall forfeit £500 to the prosecutor. But an army-clothier who contracts with the colonel of a regiment, or his agents, to furnish clothing for such a regiment, is not disqualified. *Thompson v. Pearce*, 3 Moore, 260.

The justices of the police courts of the metropolis, appointed and paid by the crown, cannot sit in parliament. Nor the commissioners of police of the metropolis and city of London; nor any poor-law commissioner, or assistant commissioner.

Lastly, no peer of parliament is eligible to a seat in the house of commons. But an Irish peer of the realm, not being one of the twenty-eight representative peers of Ireland, is eligible to represent any constituency of the United Kingdom, though such is not the case with Scotch peers who are not representative peers.

By the 52 G. 3, c. 144, members becoming bankrupt, and not paying their debts in full, are disqualified from sitting or voting for twelve calendar months; and if, at the expiration of that period, the commission is not superseded, or the debts paid in full, their seats become vacant.

A member unseated for bribery cannot be re-elected during the continuance of the same parliament.

The representative function cannot be resigned; and every member is obliged to obey a call of the house, unless he can show such cause as the house shall think a sufficient excuse for non-attendance. The usual way of vacating a seat is by accepting a situation *of profit*, by which the law declares the seat vacant. When members wish to do this, and retire from parliament, it is now usual for the crown to grant them the office of the stewardship of the Chiltern Hundreds, or of East Hendred.

The members representing the several divisions of the empire are :—

<i>English</i>	County Members	.	.	.	.	.	144	
	Universities	.	.	.	.	.	4	
	Cities and Boroughs (Sudbury and St.							
	Alban's disfranchised)	.	.	.	.	.	319	
							—	467
<i>Welsh</i>	County Members	.	.	.	.	.	15	
	Cities and Boroughs	.	.	.	.	.	14	
							—	29
<i>Scotch</i>	County Members	.	.	.	.	.	30	
	Cities and Boroughs	.	.	.	.	.	23	
							—	53
<i>Irish</i>	County Members	.	.	.	.	.	64	
	University	.	.	.	.	.	2	
	Cities and Boroughs	.	.	.	.	.	39	
							—	105

Total number of Members elected in 1852 . 654

#### QUALIFICATIONS OF ELECTORS.

ENGLAND AND WALES.—By the Reform Act, 2 W. 4, c. 45, in addition to the 40s. freeholders, the following classes of electors, of full age, and not subject to legal incapacity, are qualified to vote for members for *counties*, or divisions of counties, in which the qualification is situated :—

1. Copyholders for life, or for any larger estate, of the clear yearly value of £10, above all rents and charges payable in respect of the same.

2. Lessees or assignees of tenements, of whatever tenure, for the unexpired residue of any term originally created for not less than *sixty* years (whether determinable on a life or lives, or not), of the clear yearly value of £10 above rents and charges; or for the unexpired residue of any term originally created, for not less than *twenty* years, of the clear yearly value of £50: provided that no sub-lessee, or assignee, of any under-lease, shall

have a right to vote in respect of such term of sixty or twenty years, unless he be in the *actual* occupation of the premises.

3. Occupiers, as tenants, of any lands or tenements, at a yearly rent of not less than £50, are entitled to vote for knights of the shire.

The ancient law made no distinction between freeholds of *inheritance* and freeholds *for life*; but now no freeholds not of inheritance, though of 40s. value, will confer the right of voting, if acquired after the passing of the Reform Act, except the party be the actual occupier of the property, or the same has come by marriage, devise, or promotion, or be of the clear yearly value of £10 above rents and charges.

By 6 V. c. 18, s. 73, such occupancies need not be the same lands and tenements, but may be otherwise, if occupied in immediate succession by the same person; and joint occupiers may vote where the joint occupancy is held at a positive rent of not less than £50 to each.

No public tax, nor church, county, or parochial rate, is deemed a charge payable out of lands and tenements; nor need such to be assessed to the land-tax.

No trustee or mortgagee can vote, unless in actual possession of the rents and profits of the estate; but the mortgagor, or *cestui que* trust in possession, notwithstanding the mortgage or trust, may vote.

No person is qualified to vote for the county in respect of any freehold house occupied by himself, nor copyhold or leasehold tenancies either occupied by himself or another, if such occupancies would confer the *right of voting for any city or borough*, whether he shall or not have actually acquired such right.

Possession for a certain time, and *registration*, are essential to the exercise of the county franchise; and no person can be registered as a freeholder or copyholder, unless he has been in the actual possession or receipt of the rents and profits, for his own use, for *six* calendar months at least; nor as lessee, assignee, occupier, or tenant, unless in possession or receipt of rents and profits for *twelve* months, with an exception in case of property coming by descent, marriage, &c.

The constituency created by the Reform Act, in addition to the *old voters*, in CITIES and BOROUGHs, are, if duly registered, every owner, tenant, or occupier (if rated, and an independent occupant) of any house, warehouse, counting-house, shop, or *other building*, being, either separately or jointly, with any land occupied *therewith* under the same landlord, of the clear yearly value of £10: but the voter must have occupied for twelve months next previous to the last day of July—have been rated in respect of his premises to all poor-rates—and must have resided, for six calendar months next previous to the last day of July, within the city or borough, or within seven hori-



zontal miles. Poor-rates and assessed taxes due Jan. 5, must be paid on or before July 19 by all electors of cities or boroughs, or they will be disqualified from voting at an election.

To remedy the inconvenience of making a renewed claim in the registration of compound householders, the 14 & 15 V. c. 14, enacts, that persons having *once* claimed in respect of premises, and paying or tendering, on or before July 19, the rates due Jan. 5 preceding, shall not be required to renew their claim. The liability of the claimant to rates to continue so long as he occupies the premises and remains a registered voter. Compositions with landlord, if any, to determine amount of rate to which tenant is liable.

Premises entitling to vote need not be the same premises, but may be different premises occupied in immediate succession.

In case of *joint-occupation*, each occupier may vote, if the aggregate clear yearly value amount to £10 for each occupier.

Occupiers may demand to be rated, whether the landlord is liable or not to be rated, on tender of the full amount of the rates due.

Every person formerly entitled to vote in a city or borough continues entitled to vote, if duly registered; but no person can be registered in any year, unless on the last day of July in such year he had been qualified to vote, had such been the day of election prior to the Reform Act; nor unless he have been resident for six calendar months next previous to the last day of July; nor unless, where a burgess or freeman of any place sharing with a city or borough, he shall have been resident in such place six months next previous to the last day of July; but no person elected a burgess or freeman since March 1, 1831, or hereafter, otherwise than in respect of *birth* or *servitude*, can vote as such, or be registered.

No person is eligible to be registered, who, within twelve calendar months next previous to the last day of July, has received parochial relief or other alms.

County electors, not registered, should send in their claims to the overseer on or before the 20th of July; but, once registered, it is not necessary to renew the claim, so long as the same qualification and place of abode are retained. Voters omitted in the register for cities and boroughs, and qualified to vote on the last day of July preceding, may send in their claims on or before the 25th of August. Lists of freemen entitled to vote to be made out by the town clerk, to whom notices must be transmitted. Omissions, either by overseers or town clerks, may be supplied, on application to the revising barristers, who hold their courts every year between the 15th of September and the last day of October.

The lord chief justice of the court of queen's bench and the judges of assize appoint the revising barristers; and, where two

or more barristers are appointed for the same district, they may hold separate courts. The barrister notifies his appointment to the clerks of the peace, or the town clerk; and such clerks are, as soon as possible, to transmit to him abstracts of the lists of claimants and objections, that he may fix a time and place for holding revision courts. Ten days' notice must be given of the holding of the courts, which must be at the polling or other appointed places: they are open courts; but counsel are not to attend, attorneys and agents being employed. Overseers are to furnish the barrister with all the information in their power, to enable him to revise the lists. For the like purpose collectors and officers having the custody of the tax assessments and vote books must, on being required, produce them before him.

Any person on the list of voters may object to claimants in any county, city, or borough, on giving notice in writing to the barrister of his intention before the hearing of the claim. Notices of objection must have been previously delivered to the overseer, and person objected to, on or before the 25th of August. Voters objected to must appear in the revision court to prove their qualification, else their names will be expunged. Appeal from the barrister's decision upon points of law must be to the common pleas, upon giving notice in writing before the rising of the court. The barrister is empowered to give costs in cases of parties claiming or objecting on frivolous or vexatious ground; such costs not to exceed 20s. in any case. 6 V. c. 18, s. 38—46.

Personating a voter, or proving such personation, renders the offender liable to imprisonment, with hard labour for any term not exceeding three years, s. 83, 84.

SCOTLAND.—Under the Reform Act for Scotland the old rights of county suffrage are preserved to those individuals who were in actual possession of them, March 1, 1831, provision being made against their perpetuation. The new county electors created are owners to the value of £10 a year; leaseholders for fifty-nine years or for life, whose clear yearly interest is not less than £10; leaseholders for nineteen years, the yearly interest *not* being less than £50; yearly tenants whose rent is not less than £50 per annum, and *all* yearly tenants who have paid for their interest in their holdings not less than £300. In the *boroughs* the suffrage exclusively exercised prior to 1832 by the town councils has been abolished, and the £10 qualification, by ownership or occupancy, substituted in its place, with the like conditions as in England of twelve months' previous occupancy, payment of assessed taxes, registration, and exemption from parish relief.

By 16 V. c. 28, the sheriff, with consent of lord-advocate, may increase or alter number and arrangement of polling-

places, so that not more than 300 electors shall poll at one place. County voters to poll at the polling-place of their district, except in certain cases. Non-resident voters, with a land qualification ten miles distant, may vote at the county town. Poll at county elections to be kept open only for *one day*, and that only between the hours of eight in the morning and four in the afternoon; but not to extend to Orkney and Shetland, two days being there allowed for polling.

IRELAND.—The freehold suffrage for the counties in this division of the empire was raised in 1829 from 40s. to £10, and continued by the Reform Act. In addition the new electors created are the £10 copyholders; 2, lessees or assignees having a clear yearly interest of £10, in leaseholds for sixty years or upwards, or of £20 in leaseholds of not less than fourteen years, whether in their actual occupancy or not; 3, sub-lessees or assignees of any under-lease in either of the two cases just mentioned actually occupying; 4, the immediate lessees or assignees having a £10 yearly interest in £20 lease and actually occupying. In 1850 county voters were increased, and by 13 & 14 V. c. 69, occupiers of lands rated for the poor rate at a net annual value of £12 or upwards, and registered under the act, are qualified to vote at elections. The time of polling limited to two days in counties, or to one day in boroughs, as in England; polling to begin at nine in the morning on the first day, and at eight on the second, and close at four in the afternoon. 13 & 14 V. c. 68. In the *boroughs* the £10 ownership or occupancy was made the basis of the suffrage, coupled with the conditions of registration, six months' previous occupancy, and the payment of all rates due for more than one half-year.

UNIVERSITIES.—In the two English universities the electoral suffrage is independent of residence, property, or occupancy, being vested in the doctors and masters of arts of Oxford and Cambridge, so long as they keep their names on the books of their respective colleges. In like manner, in Dublin University it is possessed by the fellows, scholars, and graduates of Trinity College on the like condition of registration. One member was added, under the Reform Act, to the one that previously represented this university.

#### PROCEEDINGS AT ELECTIONS.

The instrument of authority by which an election is held in a county, or city, or a town being a county of itself, is a *writ*; and in a borough a *precept*. The writs are made out by the clerk of the crown, in chancery, and addressed to the sheriffs; and, after the election of the members, are returned into the crown office there. After the parliament is assembled, and

during its continuance, the house of commons alone has the right of issuing warrants to fill up vacancies, or during the recess the speaker has authority to issue his warrant, by 24 G. 3, c. 26.

By 16 & 17 V. c. 68, writs to sheriffs of counties are to require them to make elections for their counties only. Writs for elections in the universities of Oxford and Cambridge, and in boroughs, to be directed to the returning officers thereof. Elections in counties not to be later than the twelfth, nor sooner than the sixth, day after the sheriff's proclamation. Elections in cities and boroughs to be within six days after the receipt of the writ, three clear days being given. Polling at the universities to continue for five days only. Additional polling-places may be appointed by the vice-chancellor. Poll not to be taken at places licensed for the sale of beer, wine, or spirits; or in any room or place communicating therewith, without the consent of all the candidates.

By 10 V. c. 21, soldiers during a *parliamentary election* are no longer required to remove to the distance of two miles from the place of polling, but must remain in their barracks or quarters. The law for the withdrawal of the military never extended to soldiers in garrison, or to soldiers entitled to vote at elections; nor to the guards in Westminster or Southwark, or to any place of royal residence.

No inquiry is allowed at polling, except as to the identity of the voter, and whether he has already voted at the same election. Oath may be administered, if required, on the part of any candidate. Persons excluded from the register by the barrister may tender their votes at the election, and such tender be recorded.

By 6 V. c. 18, s. 79, the register is to be deemed conclusive evidence of the voter's retaining his qualification, except where he has parted with it since the registering, either totally or of so much as to reduce the remainder below qualification. Household voters are required to have a continued residence up to the time of polling.

Voters residing out of the polling district to which the parish belongs wherein their qualification is situated may vote in another district, on making a claim before the revising barrister.

The time for taking the poll in *boroughs*, at contested elections, is limited to *one day*, commencing at eight o'clock in the forenoon, and closing at four o'clock in the afternoon. Not more than 300 voters to poll in one booth, or, on the requisition of a candidate, his proposer, or seconder, to the sheriff, not more than 100. In *counties*, by 16 & 17 V. c. 15, the duration of the poll is limited to one day, commencing at eight o'clock in the morning, and closing at five o'clock in the after-

noon. No elector at any election required to take the oaths of allegiance, abjuration, and supremacy. 5 & 6 W. 4, c. 36; 5 & 6 W. 4, c. 7.

The final result of the poll to be declared by the returning officer, in counties, on the next day but one after the close, unless that day be Sunday, then on the following day; and, in boroughs, on the following day: but in neither case later than two o'clock in the afternoon.

In case of riot or open violence, the poll may be adjourned to the following day.

No police constable of the metropolis, nor belonging to the county and district constabulary force, can vote at elections. Officers of the revenue are disqualified from voting; and interfering in elections subjects them to penalties.

No lord of parliament, or lord-lieutenant of a county, has a right to interfere in the election of commoners. Lastly, no peer, woman, alien, or outlaw; felon attainted, or convict; persons excommunicated, or guilty of bribery, perjury, or subornation of perjury; blind, dumb, deaf, or lunatic, can vote at any election, either for county, city, or borough.

If an innkeeper furnish provisions to voters at the request of a candidate, he cannot afterwards maintain an action against that candidate, as the courts will not enforce the performance of a contract made in violation of the statute, *Ribbans v. Bickett*, 1 B. and A. 264.

By 9 A. c. 5, if a candidate, upon the request of another candidate, or by two electors, either at the election or at any time before the return of the writ, refuse to swear to his qualification, his election is void.

By 9 G. 4, c. 22, s. 66, if a returning officer fail to return the person duly elected, he may be sued by such person, and double damages and full costs of suit recovered; the action to be commenced within one year, or within six months after the conclusion of any proceedings relating thereto in the house of commons.

When a double return is made, the persons returned are not competent to sit, till the return has been decided upon by a parliamentary committee. If a person is returned for two places, he must elect for which he will sit.

Disputed votes as well as elections are determined by a committee of the house of commons.

In 1852 more effectual provision was made for inquiring into the existence of corrupt practices at elections, by 15 & 16 V. c. 57, enacting that on the joint address of both houses of parliament, the queen may appoint commissioners to inquire into such practices in any county, city, borough, or university; such commissioners to be named in the address, and to be barristers or advocates of seven years' standing, not being members of

parliament. Report of the inquiry to be made to the queen, and to be laid before parliament within a calendar month. Commissioners have power to send for persons and papers; witnesses not attending, refusing to answer, or to produce papers, or acting contemptuously, are punishable.

In the trial of controverted elections, it appears that a material change has been made in the law of parliament by the Evidence Act, the 14 & 15 V. c. 99. Heretofore, a member of the house of commons, whose return was petitioned against, could not be examined by an election committee, as to the bribery or other practices that had been employed in procuring his election; but Lord Brougham, the framer of the act, has stated, that there is no doubt that s. 2, with s. 4, empowers an election committee to examine both petitioners and sitting members. Sitting members and petitioners are made not merely competent but compellable witnesses.

By 1 G. 1, c. 13, and 6 G. 3, c. 53, any member of the commons who voted in the house without first taking the requisite oaths, incurred not only pecuniary penalties, but was deprived of civil rights in the courts of law. These disabilities being deemed unnecessarily severe, are repealed by 15 & 16 V. c. 43, with the exception of the pecuniary penalty of £500, recoverable by any one who will sue for it.

#### BRIBERY AND TREATING IN ELECTIONS.

A statute of constitutional interest, and evincing a desire in its framers to preclude corruption, intimidation, and undue influence in the election of members of the house of commons, was passed in the session of 1854. It is the 17 & 18 V. c. 102, and consolidates and amends previous acts; from 7 W. 3, c. 4, to 5 & 6 V. c. 102, inclusive. By s. 2, the following persons, in the words of the act, are deemed guilty of bribery:—

“ 1. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.

“ 2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do

any such act as aforesaid, on account of any voter having voted or refrained from voting at any election.

"3. Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in parliament, or the vote of any voter at any election.

"4. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise, or endeavour to procure, the return of any person to serve in Parliament, or the vote of any voter at any election.

"5. Every person who shall advance or pay, or cause to be paid, any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election."

Any person so offending is guilty of a misdemeanor, punishable by fine and imprisonment, and liable to forfeit £100 to any one who shall sue for the same, with full costs; but the above definition of bribery is not to extend to legal expenses incurred in elections. Originally, as the bill left the commons, it contained a clause declaring the payment of the travelling expenses of an elector by a candidate bribery, but this clause was omitted in the lords; consequently the law, in this respect, continues unchanged, and rests on the unreversed decision of Lord Mansfield, who held that the payment of travelling expenses is bribery. The subjoined persons are also deemed guilty of bribery, punishable as a misdemeanor, and liable to forfeit £10 to any one who prosecutes:—

"1. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election.

"2. Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote, or to refrain from voting, at any election."

By s. 4, *treating* is defined to be in every candidate who, by himself or another, either before, during, or after an election, shall give, or be accessory to giving, or pay in whole or part,

any expenses incurred for any meat, drink, or entertainment to any person, to influence his vote. Penalty on candidate so treating, to any one who shall sue, £50 for every offence, and the vote influenced null and void. *Undue influence* is defined to be threats of any force, violence, or restraint; or intimidation by menace of injury, harm, or loss; or any abduction, duress, or fraudulent device, by which the exercise of the electoral franchise is impeded or prevented. Penalty, fine or imprisonment, and the forfeit of £50 with costs to any one who will prosecute, s. 5.

By s. 6, the names of persons convicted of bribery, treating, or intimidation, are to be struck out of the register of voters by the revising barrister, and inserted in a separate list. No cockade, ribbon, or other distinction, to be given at elections, under a penalty of £2; and all expenses for music or flags held illegal, s. 7.

By s. 15, the returning officer is to appoint an *auditor* of election expenses, who is to make and sign a declaration to perform his duty conformably to the provisions of the Act. All bills and claims of agents and others to be sent within one month after election is declared to the candidate, or the right to recover barred, s. 16. Bills, &c., received within one month to be sent within three months to the election auditor by the candidate, who may object to charges; penalty for default of candidate, £20. No payments to be made except through election auditor. Candidate to pay his own personal expenses, and the expenses of newspaper advertisements; but an account of such expenses to be rendered to the auditor. No payment of election expenses to be made except by the auditor; and the auditor to make out a general account of election expenses, and such account to be open to general inspection, ss. 24-27. Auditor to be paid by a fee of £10 from each candidate, and a percentage on payments, s. 34.

By s. 36, if any candidate be declared by an election committee guilty by himself or agent of bribery, treating, or undue influence, such candidate shall be incapable of being elected for any county, city, or borough during the parliament then in existence.

Comprehensive and searching as this act appears, it has not been entirely effective for its purposes, and by 19 & 20 V. c. 84, it has been only continued for a year with a view to an amendment of some of its provisions.

#### MODE OF TRANSACTING BUSINESS IN PARLIAMENT.

The method of doing business is much the same in both houses. Each house has its speaker; the speaker of the lords is usually the lord chancellor; the speaker of the commons is chosen by the house, but must be approved by the queen. The



speaker of the commons decides on questions of form or modes of procedure; but cannot give his opinion on any legislative subject before the house; the speaker of the lords, however, if a lord of parliament, may give his opinion. In both houses a majority binds the whole, and this majority is given publicly and openly.

When an act of parliament of a private nature is wished for, to empower individuals to undertake any work of public utility (notice in the *Gazette* and the other forms prescribed by the house having first been complied with), a petition is presented by a member, which is either referred to a committee to examine the matter, or, on the petition itself, if not opposed, leave is given to bring in a bill. If the matter is of a public nature, the bill is admitted without a petition, on the motion of a member. The bill is drawn out on paper, with a number of blanks and spaces for insertions and alterations. It is read a first time, and, some little time after, a second. After each reading, the speaker explains the substance of the bill, and puts the question—*Whether it shall proceed any further?*

After a second reading it is *committed*; that is, referred to a committee, either private or of the whole house. A committee of the whole house is composed of every member, and, to form it, the speaker quits the chair, and may give his opinion as a private member; another member being appointed chairman, or the chair is taken by the chairman of ways and means. In the committee the bill is discussed clause by clause, amendments made, the blanks filled up, and sometimes the bill entirely new modelled. When the opinion of the house has been taken on each clause and amendment, the bill is ordered to be engrossed, that is, written out in a strong hand on a roll of parchment. This done, it is read a third time; when, if a new clause be added, it is done by tacking a separate piece of parchment to the bill, which is called a *rider*. The speaker then again opens the contents, and, holding it up in his hand, puts the question—*Whether it shall pass?*

If agreed to, it is carried to the bar of the lords by a deputation of members for their concurrence, where it passes through similar forms; and, if agreed to by them, it waits the royal assent; if rejected, no notice is taken, to prevent alteration. If the lords make any amendment to it, it is sent down again to the commons for their concurrence. Should the commons object to the amendment, a conference is held between members deputed by each house to adjust the difference. Where both parties remain inflexible, the bill is dropped. A bill introduced, and rejected, cannot be introduced a second time during the same session of parliament.

Similar forms are observed when a bill begins in the house of lords.

In the commons the speaker has a casting-vote in case of an equality of votes; but, in the lords, the speaker's vote is counted with the rest of the house; and, in the case of an equality of votes, the *non-contents*, or negatives, are considered the majority.

As to the *origin of bills*; with the crown originates all bills of amnesty; with the lords all bills relating to divorces, or restitution in blood or of honours; with the commons all bills relating to the public income and expenditure, and all other measures that can properly come within the class of money bills. Bills affecting the royal prerogatives are not usually introduced into either house without the previous consent of the crown. It is considered unconstitutional for one house to take the initiative in any measure affecting the privileges of the other. In general it is held that in the lords should originate bills of pains and penalties, or other measures founded upon oral testimony, as their lordships, unlike the commons, have the power of examining witnesses upon oath.

In common with courts of law, the houses of parliament can punish all contempt of their authority, or disobedience to their mandates. Each house is armed with power to repress any aggression upon their rights, or any interference with their privileges; but the operation of this power is limited to the session or duration of parliament, committals to prison by either being usually terminated by a prorogation or dissolution; but the lords may imprison beyond the end of the session (*May on Parl.* 71). Either house can delegate to a committee the power of sending for papers, and of enforcing the attendance of necessary witnesses.

Committees are, first, those of the whole house, which may be for the special consideration of certain resolutions, concerning which some doubt exists; or the house resolves itself into such committee to consider the details of a bill, the principle of which may be discussed at any or all of its other stages; or there may be committees for financial purposes, as those of supply, or ways and means. Secondly, there are select committees chosen by ballot or otherwise for some specific purpose—the numbers composing such bodies seldom exceed twenty or thirty members; occasionally these are declared committees of secrecy. Thirdly, election committees, which are judicial tribunals, appointed to try the merits of controverted elections. When the whole house is in committee, the speaker vacates the chair, the mace is placed under the table, and some other member is called on to preside, who sits in the seat of the senior clerk. For committees of supply, and ways and means, there is a chairman who receives a salary.

A *conference* may be either for the communication of resolutions, or it may be a species of negotiation between the two

houses, conducted by managers appointed on both sides, for the purpose of producing concurrence, in cases where mutual consent is necessary ; or for the purpose of reconciling differences which may have arisen. If the conference be upon the subject of a bill depending between the two houses, it must be demanded by that house which, at the time of asking the conference, is in possession of the bill. It is the sole privilege of the lords to name the time and place for holding a conference, no matter by which house it may have been demanded. Reasons in writing for the course resolved to be taken are usually furnished to the managers on both sides ; in which case it is simply called "a conference." Should this proceeding fail, a "free conference" must be held, which gives an opportunity for the managers individually, and unrestrained by any precise form of argument, to urge such reasons as in their judgment may best tend to influence the house to which they are addressed. A free conference is usually demanded after two conferences have been holden without effect. After one free conference none other but free conferences can be held touching the same subject. At all conferences, the managers on the part of the upper house are seated and wear their hats ; those for the commons stand uncovered. The speaker quits the chair of the house during the absence of managers attending a conference.

During the session the house of commons mostly sits five days weekly for the dispatch of business ; the house of lords not so often. By the regulations of 1833 (since altered), the commons agreed to meet every day except Saturday, at 12 o'clock, for private business and petitions, and to sit till three, unless the business should be sooner disposed of. At this early meeting twenty members instead of forty to form a house ; and a quarter past five o'clock, instead of four, was fixed for the house assembling in the evening. It was also resolved that a select committee should, in future, be appointed at the commencement of each session to classify all petitions presented to the house, and to order the printing of such of them at length, or in abstract, as appeared to them to require it. Measures were also adopted for obtaining and publishing authentic lists of divisions.

Discussions generally arise on a motion being made by a member, seconded by another, and then put from the chair in the shape of a question ; on each of these every member is entitled to be heard once, but he may rise again to explain, and the member who originates the motion is entitled to a reply. In committee, the restrictions on speaking are removed.

When a motion has been made upon which the house is unwilling to come to a vote, there are formal modes of avoiding a decision ; among which are, "passing to the other orders," or, moving the "previous question." The former means that the

house should take no further notice of the matter then introduced, but, casting it aside, proceed to other business appointed for that day; the latter, that a vote be previously taken as to the expediency of their coming to any decision on the question raised. If the previous question be carried, the motion it is meant to frustrate is only gotten rid of for the time; whereas a direct negative to the motion would be a proscription of it for the remainder of the session, as well as a denial of its principle.

Moving that a bill "be read 'this day six months," that is, after a prorogation has intervened, by which every bill is dropped, is a mode of throwing out a distasteful measure without coming to an express declaration upon its principle.

Notice is sometimes given of a "call of the house;" this is meant to insure a full attendance of members, as those absent without leave of the house, or just cause, are liable to be fined.

The rules of order in the house of lords differ in some particulars from those observed in the commons. In debate those who speak address the whole house, and not the chairman. The peer who sits on the woolsack or in the chair of committees has no duties to perform during the deliberations of the house, excepting to "put the question." He is not the judge or guardian of order. If several peers rise together, the house decides who shall first be heard. The speaker or deputy speaker of the lords is not disqualified *ex officio* from taking a part in debate.

#### ROYAL ASSENT.

The royal assent is given either in person or by commission. When a bill has received the royal assent in either of these ways, it becomes a statute, or act of parliament, and is enrolled in the court of chancery, and printed by the queen's printer for public distribution. The royal assent is given in the lords, the commons being present at the bar, to which they are summoned by the Black Rod. It seldom happens the assent is given in person, unless it be at the close of the session, when the queen usually attends to prorogue parliament, and, seated on the throne robed and crowned, signifies her pleasure what bills shall become acts, through the clerk of parliament.

By legal fictions all the acts passed in one session are held to be only so many chapters that comprise one statute, and the entire session to form only one day; in consequence an act of parliament was held to operate from the day on which parliament assembled, at whatever period of the session it passed. But this is remedied by the 33 G. 3, c. 13, by which all acts are directed to commence from the date of the royal assent, unless some other period is expressly mentioned in the act.

An *adjournment* is a discontinuance of sitting from one day to another during the session.

*Prorogation* is an act of royal authority, and is a discontinuance of parliament from session to session. After prorogation, all bills begun, and not completed, must, if wished for, be resumed afresh in the next session; but, after adjournment, the business of the house is taken up in the state in which it was left.

A *dissolution* is the ending or civil death of the parliament, and may happen three ways. 1. By the will of the queen, expressed either in person, by commission, or proclamation. 2. Parliament may expire by length of duration. The utmost duration of the same parliament, under 6 W. & M. c. 2, was *three years*; after the expiration of which, reckoning from the return of the first summons, the parliament was to have no longer continuance. But, by 1 G. 1, st. 2, c. 38, this term has been extended to *seven years*.

## CHAPTER VI.

### *Rights of the People.*

THE people may be relatively considered that great portion of the community separate from its government; and, having briefly stated the origin and powers of the ruling authorities, we shall next advert to those protective measures by which society is shielded from the oppression and encroachments of power.

The chief securities, by which the rights of the people are recognised, are Magna Charta, the Coronation Oath, the Petition of Right, the Habeas Corpus Act, the Bill of Rights, and the Act of Settlement. With the exception of the last, the Bill of Rights is the most recent declaration in favour of public liberty; and, comprising, as it does, a distinct affirmation of all those points on which the people and their rulers had been formerly divided, it may now be considered the great constitutional act by which the national rights and immunities are prescribed and guaranteed.

The Bill of Rights, or declaration delivered by the lords and commons to the Prince and Princess of Orange, February 13th, 1689, and afterwards enacted in parliament, and incorporated in the statute law of the realm, declares—

That the pretended power of suspending laws, or the execution of laws, by regal authority, without the consent of parliament, is illegal.

That levying money for the use of the crown by pretence of prerogative, without grant of parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

That it is the right of the subject to petition the queen, and

all commitments and prosecutions for such petitioning are illegal.

That the raising or keeping a standing army within the kingdom in time of peace, without the consent of parliament, is against law.

That subjects who are Protestants may have arms for their defence suitable to their condition, and as allowed by law.

That elections of members of parliament ought to be free.

That the freedom of speech and debate, and proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

That jurors ought to be duly empannelled and returned, and jurors who sit upon men accused of high treason ought to be freeholders.

That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

And, for redress of grievances and amendment of the laws, parliaments ought to be held frequently.

The various claims set forth in this declaration are affirmed to be the indubitable rights and liberties of the people, and are again asserted in the Act of Settlement, which limited the crown to the family of her present majesty. Some new provisions were also added, for better securing our rights and immunities, which the statute declares to be "the birthright of the people of England," according to the ancient doctrine of the common law.

The guarantee of civil liberties next in importance is the *Habeas Corpus Act*, the 16 C. 1, c. 10, amended by later statutes. By this act, if any person be imprisoned by the order of any court, or the queen herself, he may have a writ of habeas corpus to bring him before the court of queen's bench or the common pleas, who shall determine whether the cause of his committal be just. As this act extends only to committals in criminal cases, the 53 G. 3, c. 100, has extended the remedies it gives to miscellaneous causes of confinement other than criminal offences, and the power of issuing the writ to all the judges.

In times of great political excitement, the operation of the Habeas Corpus Act is usually suspended. But this suspension does not enable any one to imprison without cause or valid pretext for so doing; it only prevents persons who are committed from being bailed, tried, or discharged during the suspension, leaving to the committing magistrate all the responsibility attending on illegal imprisonment. It is very common, therefore, to pass an act of indemnity subsequently, for the protection of those who either could not defend themselves in an action of

false imprisonment without making improper disclosures of the information on which they acted, or who have done acts not strictly defensible at law, though apparently justified by the necessity of the moment.

## PART II.

### ADMINISTRATION OF JUSTICE.

WHEN a person has sustained an injury, the first consideration naturally is the mode whereby that injury can be redressed. It will be proper, therefore, before we enter on the wrongs to which individuals are liable, shortly to advert to the tribunals and remedies provided by the laws of England for the administration of civil and criminal justice. This division of the subject will be included under the following heads:—

1. *Courts of Law.*
2. *Civil Process.*
3. *Criminal Process.*
4. *Process and Reforms in Equity.—Summary Convictions.*
5. *Constitution of Injuries.*
6. *Evidence.*

#### CHAPTER I.

##### *Courts of Law.*

COURTS are places where justice is judicially administered, either in civil cases, between party and party, or, in criminal offences, between the sovereign and the people. Some of them are superior, as the great courts of Westminster, and have a general jurisdiction and control over other courts. Others are inferior, their jurisdiction limited, and subordinate to superior courts. Some of them are *courts of record*, others *not of record*, and this forms the chief legal distinction.

A *court of record* is that where the proceedings are enrolled in parchment and preserved, and which has power to hold pleas, according to the course of the common law, in all actions to the amount of 40s. or upwards; such are the court of queen's bench, the common pleas, the county courts, and the courts of borough recorders.

A *court not of record* is that where proceedings are not enrolled, and which has no general authority to fine and imprison;

such are the courts baron. These courts can hold no plea of matters cognizable by the commonlaw, unless under the value of 40s., nor of any forcible injury whatever, not having any process to arrest the person of the defendant.

The supreme court of judicature in the kingdom is the *House of Lords*. It has no original jurisdiction over causes, except in divorce bills or contested elections of its own members, but only upon appeals, to rectify any injustice or mistake in the courts below, and is, in all suits, the last resort, from whose decision no further appeal to any other tribunal is permitted.

Next to the house of lords is the *Court of Chancery*, which is of very ancient institution. Its jurisdiction is either *ordinary* or *extraordinary*; in the first, its mode of proceeding is conformable to the common law; in the last, it exercises jurisdiction in cases of equity, in order to abate the rigour of the common law, and afford a remedy for grievances in which the ordinary law-courts are inadequate. When a plaintiff can have his remedy at common law, the court of chancery will not interfere; neither will it entertain a suit for any amount under £10, except in cases of charity; nor concerning lands under 40s. per annum; nor will it relieve persons in suits where the matter of them tends to overthrow any fundamental point of the common or statute law.

The lord chancellor is the highest judicial officer in the kingdom. To him belongs the appointment of all justices of the peace. He is a privy-councillor by his office, and speaker of the house of lords by prescription. He is keeper of the queen's conscience; visitor, in right of the queen, of all royal hospitals, colleges, and foundations; and patron of all the queen's livings, of the value of £20 or under per annum, in the king's book. He is the guardian of infants and lunatics, and has the general superintendence of charitable uses in the kingdom, assisted by the commissioners under the Charitable Trusts Act.

Assistant to, and subordinate to the lord chancellor, are the master of the rolls and the three vice-chancellors. Each of these judges presides over a separate tribunal, and any causes or motions may be brought before them, except such as relate to lunatics, which are always heard by the chancellor. A vice-chancellor is bound to hear all those matters which the chancellor may direct, in addition to those originally set down for hearing in his own court: the master of the rolls is not so bound; and his decrees or orders in cases decided before him can only be reversed or altered by the chancellor, upon petition or appeal.

In like manner the proceedings of a vice-chancellor may be reversed, discharged, or altered, and cannot be enrolled until signed by the chancellor or lords justices; no vice-chancellor, however, can discharge or alter an act or order of any other



vice-chancellor, except of his own predecessor in office, or of the lord chancellor, or master of the rolls, unless authorized by them.

By 5 V. c. 5, the lord chancellor may direct a vice-chancellor to sit for him, and at other times in a separate court, whether the other courts of chancery are sitting or not; every vice-chancellor, if a member of the privy council, is a member of the judicial committee: he takes precedence next after the lord chief baron, and is empowered to appoint his secretary, usher, and train-bearer. His tenure of office is during good behaviour.

By 13 & 14 V. c. 35, power is given to persons interested in questions cognizable in the court of chancery, to state special cases for the opinion of the court, by which the delay and expense of proceedings may be diminished. Special cases are to be signed by counsel, filed, and appearances entered by defendants. Upon hearing, court may determine question and make declaration, or case may be sent to a common law court.

In 1851, under 14 & 15 V. c. 83, a Court of Appeal in Chancery was established, to consist of two lords justices, barristers-at-law of fifteen years' standing, appointed by the crown, and the lord chancellor. The lords justices to have precedence next to the chief baron of the court of exchequer, and between themselves according to seniority of appointment. All the jurisdiction, powers, and duties, now exercised by the court of chancery, and all statutory jurisdiction now vested in the chancellor, may be exercised by the court of appeal; saving certain ministerial powers of the chancellor pertaining to the custody of lunatics, visitation of charities, or revocation of letters patent. Jurisdiction of the vice-chancellor in bankruptcy is transferred to the court of appeal, and no appeal allowed to the lord chancellor.

The court of *Queen's Bench* is the supreme court of the common law in the kingdom, consisting of a chief justice and four *puisne* justices, who are, by their offices, the great conservators of the peace and head coroners of the land.

The jurisdiction of this court is very high, and claims precedence of the court of chancery. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress below. It controls all civil corporations in the kingdom. It commands magistrates and others to do what their duty requires, in cases where there is no other specific remedy. It protects the liberty of the subject, by summary and speedy interposition. It takes cognizance of both criminal and civil causes; the former in what is called the crown side, the latter on the plea side, of the court.

The Queen's Bench is likewise a court of appeal, into which may be removed determinations of the court of common pleas,

and generally of inferior courts of record in England. Indictments removed into this court may be tried either *at bar*, that is, at the bar of the court while sitting in term time, or *at nisi prius*, by a jury of the county out of which the indictment is brought, the court itself being the principal court of criminal jurisdiction in the kingdom. An appeal, however, may be had even from this tribunal; for, if a suitor be not satisfied with a decision here, he may appeal to the house of lords, or the court of exchequer chamber, according to the nature of the suit, and the manner in which it has been prosecuted. Indictments moved into the Queen's Bench the court may order to be tried at the Central Criminal Court, or offences committed out of the jurisdiction of that court may be ordered to be tried there under 19 & 20 V. c. 16.

The jurisdiction of the court of *Common Pleas*, like that of the other courts of Westminster, is general, and extends throughout England: but it has no cognizance of crimes or matters of a public nature. The judges of the court are five in number, one chief and four petty judges, created by the queen's letters patent, who sit every day in the four terms, to hear and determine all matters of law arising in civil causes, whether in real, personal, or mixed actions. These it takes cognizance of, as well originally as upon removal from the inferior courts.

Another superior court is the court of *Exchequer*. It is held before the chancellor of the exchequer, the chief baron, and four puisne barons. The chief business of the court was formerly to take cognizance of matters connected with the public revenue, though, by a fiction of law, common to this court, as well as to that of the queen's bench, all personal suits may be prosecuted in the court of exchequer. By 5 V. c. 5, the jurisdiction of this court as a court of equity is abolished, and transferred to the court of chancery, but the exchequer retains all its powers, other than those it exercised up to 1841 as a court of equity. By 18 & 19 V. c. 90, for remedying delays, the barons are to frame rules and orders for regulating pleadings and practice, so as to assimilate proceedings in crown suits to those between subjects.

The court of *Exchequer Chamber* is held for revising the judgments of the three superior courts of law, and is holden before the judges of the two other courts not concerned in the judgment impeached. In this court, such causes as appear to the judges, upon argument, weighty and difficult, are discussed, before any judgment is given upon them in the courts below.

Another court of error or appeal is the *Judicial Committee* of the privy council, consisting of the lord chancellor, lord justices, lord chief justices, judges, vice-chancellors, master of the rolls, judges of the admiralty, bankruptcy, and prerogative courts,

with the bishops for ecclesiastical purposes, and such two other members of the council as the queen may summon. Appeal to this court may be made from the admiralty and ecclesiastical courts, and from the British colonies and dominions abroad. Four members constitute a quorum. It has also cognizance of patents for inventions, and power to enlarge the term of duration of patents, as extended by 7 & 8 V. c. 69.

The courts of *Assize* and *Nisi Prius* are composed of two or more judges, who are twice, or three times in the home circuit, every year sent round the kingdom to try, by juries of the respective counties, the truth of such matters of fact as are brought before them. Their commission extends to every description of offence, civil or criminal. They usually make their circuits in the respective vacations after Hilary and Trinity terms.

In London and Middlesex, the courts of *Nisi Prius*, or sittings after term, as they are called, are held in or after term, before the chief or other judge of the superior courts.

The *Central Criminal Court* of the Old Bailey is for the trial of offences committed in the metropolis, and certain parts adjacent, in the counties of Essex, Kent, and Surrey, including places within a circuit of ten miles round St. Paul's Cathedral. The sessions to be holden *twelve times* a year at the least, and oftener if need be, in the city of London or the suburbs. All treasons, felonies, misdemeanors, and offences on the high seas may be tried at this court. By 7 & 8 V. c. 71, for the trial of offences in Middlesex, two sessions of the peace are to be holden every calendar month. An assistant judge, with a deputy, are created, and the Westminster sessions discontinued.

The court of *General Quarter Sessions* is held by two or more justices of peace in every county and division of county, once every quarter of a year, for the trial of misdemeanors and other matters touching the breach of the peace. Under the 1 W. 4, c. 70, these sessions in the several counties, ridings, and divisions, are required to be held in the first week after the 11th of October, in the first week after the 28th of December, in the first week after the 31st of March, and in the first week after the 24th of June. But by 4 & 5 W. 4, c. 47, the justices may direct the April quarter sessions to be held any time between March 7th and April 22nd, so as not to interfere with the spring assizes.

The court for *Relief of Insolvent Debtors* consists of a chief and two other commissioners, being barristers at law of ten years' standing at the least. It is a court of record, for the purposes of the act by which it is created; and one or more commissioners are appointed to sit twice a week throughout the year in the cities of London or Westminster or in the county of Middlesex, within the bills of mortality. Of the constitu-

tion of the insolvent court, and of the mode in which it is now regulated, we shall hereafter speak, under the head of *Insolvency*.

The old *County Courts*, kept by the sheriffs before the superior courts of Westminster were erected, were the chief courts in the kingdom. Their powers were greatly reduced by the statute of *Magna Charta*; and their ordinary jurisdiction limited to the determination of trespasses and debts under 40s. They could not generally arrest the person; and, though they might attach the goods, they had no power to sell them in satisfaction of a debt, if the demand exceeded 40s. Specialty debts were not recoverable there, and the cause of action must arise and the defendant reside within the county.

The dilatory and expensive proceedings of these tribunals, and various local courts for the recovery of small debts, led to the establishment in 1846, by the 9 & 10 V. c. 95, of the present *County Courts*, with more efficient and definite powers. Under this act, amended and extended by subsequent acts, the privy council is empowered to divide counties into districts, and the local courts already existing are to be held as county courts, and districts assigned them. The judges of the courts are appointed by the lord chancellor, and removable by him for inability or their district changed. The courts have jurisdiction in all actions for debt or damage not exceeding £50, except in an action of ejectment, or relative to title of hereditament, franchise, will, settlement, libel, seduction, or breach of promise of marriage. Judgments are mostly final in these courts. Scale of fees is fixed by five of the judges, under 15 & 16 V. c. 54; and either attorney or barrister, without right of pre-audience, or any other person with leave of the judge, may appear for parties. Suits are by plaint, and the courts are courts of record. See *Debtors and Creditors*. Except in the district of the Insolvent Debtors' Court in London, the County Courts have now exclusive jurisdiction as insolvent debtors' courts. The jurisdiction of the county court in insolvency is over insolvents and defendants residing within the limits of its own district.

The *Court Leet* is a court incident to a hundred, ordained for punishing encroachments, nuisances, fraudulent weights, and offences against the crown. The steward is the judge; and every one, from the age of twelve to sixty years, that dwells within the leet, is obliged to do suit within this court, except peers, clergymen, &c. The lord of the leet was formerly required to have a pillory and tumbrel to punish offenders; or, for want thereof, he might be fined, or the liberty seized: all towns within the leet were to have stocks in repair; and the town that had none was to forfeit £5.

The *Court Baron* is that court which every lord of a manor

has within his own precinct, and is an inseparable adjunct to a manor. It must be held by prescription, for it cannot be created at this day, and is to be kept on some part of the manor. The court is for passing estates and surrenders, and for receiving homage, duties, heriots, and customs.

There is yet another court known to the law of England, which is the court of *Pie Poudre*, so called because it is usually held in summer, when the suitors have dusty feet, and from the expedition of hearing causes before the dust leaves the feet. It is a court of record incident to every fair and market, of which the owner of the toll of the market is judge; and its jurisdiction extends to administer justice for all trading injuries done in the fair and market. An appeal lies to the courts at Westminster.

## II. ECCLESIASTICAL, MARITIME, AND LOCAL COURTS

There are various other courts for the administration of justice, such as the court of bankruptcy (see *Bankruptcy*), the courts of corporate towns, and police courts, exercising summary jurisdiction over light offences. There are also courts which take cognizance of injuries chiefly of an ecclesiastical, military, trading, and maritime nature.

The principal ecclesiastical court of the province of Canterbury is the *Court of Arches*, said to be so called from its having been accidentally held in the crypt of Bow Church, which was originally built on *arches*. The thirteen parishes of London, which are peculiars of the archbishop, are under the immediate jurisdiction of the judge of this court, who is hence styled the Dean of the Arches. The *Court of Peculiars* is a branch of and annexed to the court of arches. It has a jurisdiction over all those parishes through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. The *Prerogative Court* is guardian of the various rights of succession to property. It has a registry attached to it, in which all original wills are deposited; and grants letters of administration to executors and next of kin. The number of courts of peculiars is great; and those with the diocesan courts and the spiritual courts of the province of York form part of the ecclesiastical administration of the kingdom. The *Court of Delegates* was the great court of appeal in ecclesiastical causes; but it was abolished by 2 & 3 W. 4, c. 92, and its powers and functions transferred to the judicial committee of the privy council.

The only maritime court it is necessary to mention is the *Court of Admiralty*, which is held before the lord high admiral, or his deputy, who is the judge of the court. It proceeds according to the rules of the civil law, and consequently is not allowed to be a court of record any more than the ecclesiastical

courts. By 7 & 8 V. c. 2, all offences on the 'high seas are now tried at the assizes or the central criminal court.

Besides these courts of a general nature, there are others with a special jurisdiction; as the court of *Commissioners of Sewers*, whose business is to overlook the repair of sea-banks, the cleansing of public streams, ditches, and conduits. They are appointed by commission under the great seal, and their authority is limited to such county or district as the commission expresses.

The *Lord Mayor's Court*, for actions of debt, appeals, and apprenticeships, within the city of London, is held by the recorder in Guildhall. Decisions are given in fourteen days, at an expense of about 30s.; and no action can be removed unless the debt exceed £5. The *Sheriff's Court*, for debt and accounts, is also held in Guildhall, by the sheriff, or his deputy, every Wednesday, Thursday, Friday, and Saturday. From this court an appeal lies to a superior court in Westminster, if the debt exceed £5; but if the debt be under £10 it cannot be allowed till bail be put in. It is not a branch of the county court, as enlarged by the County Court Act, but established by a separate act of parliament. Its jurisdiction is only within the city, and is of the same kind with that of the county court with respect to the arrears and notice of claims, and the fees are similar; but an execution from a county court cannot be legally levied in the city by the bailiff of the sheriff's court, nor one from that court carried out in any county court district.

## CHAPTER II.

### *Civil Procedure.*

UNDER the jurisdiction of one of the courts mentioned in the last chapter almost every description of wrong may be brought; and the nature and locality of the injury determine the process an individual ought to adopt, and the tribunal to which he ought to apply, for the redress of his grievance.

Injuries are of two kinds, *civil* and *criminal*; the former are such private wrongs as principally affect the interests of individuals; the latter are those greater delinquencies which endanger the peace and well-being of society, and are denominated crimes and misdemeanors.

The usual remedy for a civil or private injury is by *action*; in which an individual seeks compensation for some injustice he has sustained in his reputation, person or property. The remedy for a public or criminal wrong is by *indictment*; in which the object sought is not compensation to the sufferer, but the punishment of the offender. The former is at the risk and

suit of an individual, the latter at the suit of the crown, as the chief magistrate and general conservator of the public safety.

The judicial process in civil and criminal suits is in many respects similar; but, that the points in which they differ may be more clearly understood, it will be useful briefly to indicate the steps in civil and criminal procedure.

The person who commences an action is termed the *plaintiff*; and the person against whom the action is brought the *defendant*. Before the suit is begun, the attorney of the plaintiff, if a respectable one is employed, writes a letter to the defendant, apprizing him of the demand of his employer, and that, if not complied with, legal proceedings will be instituted: this intimation producing no satisfactory result, the action mostly begins by issuing a *writ of summons*, which is a judicial writ proceeding out of the court in which the plaintiff brings his action, directed to the defendant, commanding him, within eight days from the service of the writ, to enter an appearance in the court, or in default, an appearance will be entered for him by the plaintiff, who will thereon proceed to judgment. Writ must be served within six calendar months from its date, or if renewed, from the date of such renewal, the day of such date inclusive. By obeying the writ, a copy of which is served on the defendant, and entering an *appearance*, that is, leaving a memorandum, termed an *appearance*, with an officer of the court, the defendant recognises the jurisdiction, and both plaintiff and defendant are now said to be *in court*, and ready to enter on and contest the legal issue.

Under the old law, the plaintiff, at the commencement of an action, who was prepared to swear to a debt of £20, might cause the defendant to be *arrested*, and make him put in substantial sureties for his appearance, called special bail. This was called arrest on mesne process, by way of contradistinction to arrest on final judgment; that is, arrest to compel the payment of a debt judicially adjudged by a competent tribunal to be due. But the 1 & 2 V. c. 110, abolishes the power of arrest in any civil action on mesne process, and provides that all personal actions in the superior courts shall be commenced by *writ of summons*. A defendant can now only be arrested, prior to final judgment, provided there is danger of his leaving the kingdom; in which case the plaintiff, or some one for him, must make affidavit that his cause of action amounts to £20 or upwards, and that there is ground for believing the defendant intends to quit England; upon which the judge will issue a special order to hold the defendant to bail for the amount of the debt. The *capias* so issued, under a judge's order, is in force for one calendar month from the date (including the day of the date), within which time the sheriff is required to arrest

the defendant, and detain him till he shall have given bail-bond, or, according to the former practice, made deposit with the sheriff to the amount of the plaintiff's claim, together with £10 for costs.

Another important curtailment of the power of personal arrest is that made by 7 & 8 V. c. 96, which abolishes the power of arrest even upon final process, that is, upon judgment debts, provided the sum recovered does not exceed *twenty pounds*, exclusive of the costs recovered by the judgment. Neither does the County Courts Act empower to imprison merely for failure of payment of the whole debt or any instalment. Under the 9 & 10 V. c. 95, as imprisonment does not extinguish or satisfy the debt, the act does not give to the judge power to punish, unless it be for a positive offence, by the fraudulent concealment of property, or contempt of court, or other wilful default.

Having noticed these changes, let us resume the course of the suit, after an appearance, as already explained, has been entered. The next step is the PLEADINGS, or mutual statements, in legal form, of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence; these were formerly made *viva voce*, by counsel in court, and minuted down by the chief clerk or prothonotary, but this practice was abandoned in the reign of Edward III., and they are now set down, and delivered into the proper office in writing. They begin by the plaintiff delivering to the opposite party an instrument called a *declaration*, consisting of a formal written statement of the title of the court in which the action is brought, the county, or *venue*, in which it is to be tried, and the subject-matter of the complaint or ground of action. This is followed by notice to the defendant to plead, or put in his answer, which he must do in four days, or, if a country cause, in eight days, though in either case an extension of time is generally granted on applying to a judge.

The reply of the defendant is called a *plea*. Pleas are of various kinds, consisting of any allegation by which the defendant endeavours to frustrate the suit; as by objecting to the jurisdiction of the court, denying the validity of the plaintiff's claim, his right of action, or by pleading a tender of payment, or set-off.

A defendant may also plead the Statute of Limitations, or the elapse of that period of time allowed by the 21 Jac. 1, c. 16, for the commencement of actions. Personal actions for trespass, or debt on simple contract, must be commenced within six years after the cause of action; and actions of assault, menace, or imprisonment, within four years after the injury committed. All penal actions for forfeitures made by statute must be sued within one or two years. Actions on bills of exchange, attor-



neys' fees, and a demand for rent on *parol* lease, must be within six years.

By the Mercantile Law Amendment Act, 19 & 20 V. c. 97, s. 9, "all actions of account or for not accounting, and suits for such accounts, as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within *six years* after the cause of such actions or suits, or, when such cause has already arisen, then within *six years* after the passing of this act; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit." The absence of a creditor or his imprisonment does not entitle him to a longer term within which to commence an action, and the period of limitation extends to joint debtors though some of them are abroad, *ss.* 10, 11.

By 3 & 4 W. 4, c. 27, no person shall make an entry or distress, or bring an action to recover any land or rent but within *twenty years* next after the time at which the right to make such entry or distress, or to bring such action, had first accrued. In case of tenants at will, the right of action accrues either at the determination of such tenancy, or at the expiration of one year after the commencement of such tenancy, at which time the tenancy is deemed to have determined; but no mortgagor or cestui que trust is deemed within the clause. Money charged on land or rent deemed satisfied, unless claimed within twenty years. No *arrears of rent*, or of interest in respect of any sum of money charged upon or payable out of land or rent, or in respect of any legacy, is recoverable after the expiration of *six years* from the time the same may have respectively become due.

By the Common Law Procedure Act of 1852, material changes have been made in the process, practice, and pleadings of the superior courts of common law. In the 15 & 16 V. c. 76, new forms of writ are given, and the defendant is empowered to demand of any attorney whose name is endorsed on the writ, whether such writ has been issued by him, or with his authority or privity; and if he answers in the affirmative, then he shall also, within a time allowed by the court, on pain of contempt, declare in writing the profession, occupation, or quality and place of abode of the plaintiff; and if he answer in the negative, all proceedings shall be stayed, and not be renewed without leave of the court or judge. Concurrent writs may be issued, and may be served in any county. In cases where personal service cannot be effected, and it shall be made to appear to the court that defendant knows of the writ, or that he wilfully evades service, and rea-

sonable efforts have been made to effect service, the court may order plaintiff to proceed as if personal service had been effected.

With regard to *pleadings*, it is provided that where the parties are agreed as to the question of fact to be decided between them, they may by consent and order of a judge proceed to trial without formal pleading, and such question may be stated in a form given in the schedule to the effect that A. B. affirms and C. D. denies the matter in issue. The parties to a suit may enter into an agreement that, upon the finding of the jury in the affirmative, or negative, a sum of money fixed by the parties, or to be ascertained by the jury, shall be paid by one to the other of them. Questions of law may be raised after writ issued without pleading, and parties may make agreements as to money and costs, to be paid according to the judgment in such special case. Fictitious and needless averments are not to be made, and either party may object by demurrer to the pleadings of the opposite party, on the ground that such pleas do not set forth sufficient ground of action, defence, or reply; and where issue is joined on such demurrer, judgment may be given "on the very right of the cause." Objections by way of special demurrer are taken away, and pleadings so framed as to prejudice, embarrass, or delay, may be struck out or amended. The former verbose and cumbrous declarations have been abolished, and a simple form of declaration is given. Rules to plead and demand of plea are abolished, and "express colour" is no longer to be necessary in any pleading. Special traverses are also declared to be unnecessary in any pleading, as are also the formal commencement and prayer of judgment. No formal defence is to be required in a plea, avowry, or cognizance, and there is to be no formal conclusion. All that is to be required is to state the first, second, and third grounds of defence, if so many, or more, if more.

Another provision is calculated to save expense in the causes to which it may apply. It is that either party may call on the other by notice to admit any document, saving all just exceptions; and, in case of refusal or neglect to admit, the cost of proving such document is to be paid by the party refusing or neglecting to admit it, whatever the result of the trial may be, unless the judge shall certify that the refusal to admit was reasonable.

Some other salutary enactments pertain to the abatement of suits. In future, the death of a plaintiff or defendant is not to cause an action to abate, but it may be continued by or against the personal representative; and if one plaintiff or defendant should die, and the cause of action shall survive to the surviving plaintiff or defendant, the action is to proceed. It is also provided that the marriage of a female plaintiff or

defendant is not to abate an action ; and that in case of the bankruptcy or insolvency of a plaintiff, his assignees may, within a given time, continue the action.

Procedure was further amended, in 1854, by 17 & 18 V. c. 125, and the parties to a cause, by consent in writing, may leave the decision of any issue of fact to the court ; and the verdict be the same as the verdict of a jury, save that it shall not be questioned on the ground of being against evidence. For other amendments under this and the former statute, see *Arbitration, Evidence, and Libel*.

Resuming the progress of a lawsuit after the pleadings, the next stage of procedure is the *ISSUE*, which may be either upon matter of *law*, or matter of *fact*. An issue upon matter of *law* is called a *demurrer*, in which the statement of facts is admitted ; but it is denied that the law arising upon those facts is such as stated by the opposite party. An issue of *fact* is where the fact only, and not the law, is disputed.

Here it may be proper to observe, that during the whole of these proceedings, from the time of the defendant's appearance in obedience to the writ of summons, it is necessary that both the parties be in court from day to day, till the final determination of the suit. For, if either party neglect to put in his declaration, plea, or the like, within the time allowed, the plaintiff, if the omission be his, is said to be *non-suited*, or not to follow and pursue his complaint, and he loses the benefit of his writ ; or if the negligence be on the side of the defendant, judgment may be had against him for *default*. But these observances and attendances, as it is almost needless to remark, are all performed by the attorneys of the respective parties, though the plaintiff and defendant are ostensibly before the court, and bear all the consequences of its proceedings and adjudication.

An *issue of law*, or demurrer, is determined by the judges, after hearing argument by counsel on both sides. But an issue of fact may take up more form and preparation to settle it ; for here the matter alleged must be investigated before a jury by the questioning of witnesses, and whatever evidence can be adduced to establish the truth. This examination of facts is properly the TRIAL BY JURY, to which the preceding stages of a lawsuit are only preliminary steps. Of the constitution, the mode of summoning and empanelling juries, and also of the nature of evidence, we shall speak more at large hereafter ; at present we shall continue the progress of the suit to its termination.

The jury being sworn, the pleadings are opened to them by the counsel for the plaintiff, who states the nature of the action, and the evidence intended to be produced in its support ; when the evidence of the plaintiff is gone through, the counsel for the defendant states his case and supports it by evidence ; and

then the party who began is heard in reply, if witnesses have been called by the defendant in support of his case, otherwise no reply is allowed to plaintiff's counsel.

By 17 & 18 V. c. 125, s. 18, it is provided that "upon the trial of any cause, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any); and the right to reply shall be the same as at present." Court may adjourn a trial, subject to such terms as to costs as it think fit, s. 19. Affirmation in lieu of oath allowed to parties who religiously object to be sworn.

Both sides having finished, the judge sums up the whole to the jury, omitting all superfluous circumstances; observing wherein the main question and principal issue lie; stating what evidence has been given to support them, with such remarks as he thinks necessary for their direction; and giving his opinion on matters of law arising upon that evidence. If, in his direction, the judge mistake the law, either through inadvertence or design, the counsel on either side may require him publicly to seal a *bill of exceptions*, stating the point in which he is supposed to err; and this he is obliged to seal, or, if he refuse, the party may have a compulsory writ against him, commanding him to seal, if the fact alleged against him be truly stated.

Next follows the VERDICT, which, to be valid, must be unanimously agreed to by the jury, and delivered publicly in court. When a verdict will carry all the costs, and it is doubtful from the evidence for which party it will be given, it is common for the judge to recommend, and the parties to consent, to *withdraw a juror*; then no verdict is given, and each party pays his own costs.

After the verdict follows the JUDGMENT of the court; judgment may, however, where there has been any defect in the trial, be suspended or arrested, for it cannot be entered till the next term after trial had, and that upon notice to the other party.

Causes for suspending judgment, by granting a *new trial*, may arise for want of due notice of trial; improper behaviour of the jury among themselves, or of the plaintiff towards them, by which their verdict is influenced; misdirection of the judge; or exorbitant damages: for these and similar reasons a new trial will be awarded. But if two juries agree in the same or a similar verdict, a third trial is seldom conceded.

If the judgment is not appealed against, suspended, or re-

versed, the result and last stage in the proceedings of a suit is the EXECUTION, or the putting the sentence of the law in force. Execution is of divers kinds. If the plaintiff obtain a verdict whereby the possession of land is awarded to him, a writ is directed to the sheriff, commanding him to give actual possession to the plaintiff; and the sheriff may justify breaking open doors if the possession is not peaceably yielded. But if quietly given up, the delivery of a twig or turf, or the ring of the door, in the form of putting in possession, is sufficient.

Executions in actions, where money only is recovered, may be entered against the body of the defendant, or against his goods and chattels, or against all three, his body, land, and goods.

Every writ of execution must be sued out within a *year and a day* after the judgment is entered; otherwise the court concludes that the judgment is satisfied and extinct.

By 15 & 16 V. c. 76, s. 120, in a verdict obtained out of term, execution may issue in fourteen days, unless the judge order an earlier or later day. The same act provides, that the writ or execution may be directed to the sheriff of any county without reference to *venue*; that it is to remain in force for one year, and to be renewed if necessary. \*3\*

The 3 & 4 W. 4, c. 42, is intended to lessen the expense and facilitate judicial process. Executors may bring actions for injuries committed to the *real* estate of the deceased during his lifetime; and the contrary against executors for injuries to property, real or personal, by the testator. Statutory limitations are, for the first time, put to the periods within which actions may be brought on bonds and other deeds, judgments, and other matters of record. Pleas of abatement as to misnomer and non-joinder of a co-defendant are restricted. Wager of law is abolished. In suits for any sum not *exceeding* £20 in the superior courts, the judge may direct, as before stated, the issue joined to be tried before the sheriff, or in any court of record for the recovery of debts in the county. The power to pay money into court is extended to damages of uncertain amount, either for breach of contract, or for a wrong; hitherto it had been limited to *debts* strictly so called. Power is given to juries to allow *interest* upon all debts or sums certain, payable at a certain time by virtue of a *written* instrument. Executors suing in right of testator, made liable to *costs* in case of nonsuit or verdict passing against them. In case of arbitrations, the parties having mutually agreed to a reference, neither of them allowed to revoke without leave of court. Lastly, no *holidays* are allowed in the courts of common law, or in offices appertaining thereto, except Sundays, Christmas-day, and the three following days, and Monday and Tuesday in Easter week.

Before concluding, we must say something of costs, which

form an inseparable and material adjunct to every lawsuit. For the most part, costs are paid by the vanquished party, except in a few instances, privileged by statute or prescription. The queen, except in some modern statutes, neither pays nor receives costs. Persons who will swear themselves not worth £5, may have writs and subpoenas gratis, and counsel and attorney assigned them without fee; and are excused from paying costs when plaintiffs, but shall suffer other punishment at the discretion of the court. The prosecutor, in any action for a pecuniary penalty, is not entitled to costs, unless expressly given by the statute. To prevent trifling actions for assault, battery, and trespass, it is enacted that, where the jury gives *less* damages than 40s., the plaintiff shall be allowed no more costs than damages, unless the judge certify that an assault, or actual battery, has been proved, or that in trespass it was wilful and malicious. In actions for slander, no sum under 40s. ever carries costs; the defendant having justified or not makes no difference, and there is no certificate grantable for either party. But in actions for libel, crim. con., seduction, debt, contract, or consequential damage, the smallest damages carry *full costs*, whether the defendant has justified or not, unless the judge certifies in *favour of the defendant*; which deprives the plaintiff of his costs.

### CHAPTER III.

#### *Criminal Procedure.*

HAVING traced the progress of an action for the redress of private injuries, we come next to the mode of criminal procedure for the punishment of offences against the public; and of which the first step is in the ARREST of the person of the delinquent. In criminal cases, every person is liable to arrest without distinction; but no man is to be arrested unless charged with such a crime as will at least justify holding him to bail when taken.

Warrants for arrest are usually issued on application to a justice of the peace; they should set forth the time and place of making, and the cause for which they are made; and should be directed to the constable, or other peace officer, requiring him to bring the accused party, either generally before any justice of the county, or only before the justice who grants the warrant. The warrant, in the latter case, is called a *special* warrant.

A general warrant, to apprehend *all* persons suspected, without naming any person in particular, is illegal; so is a warrant to apprehend all persons guilty of a crime therein specified.

A warrant from the chief or other justice of the court of Queen's Bench extends all over the kingdom, and is dated "England," not Oxfordshire, Berks, or other particular county. But the warrant of a justice of peace in one county, as Yorkshire, must be backed, that is, signed, by a justice of another, as Middlesex, before it can be executed there. So a warrant to apprehend an offender escaped from England into Ireland or Scotland must be endorsed by the local magistrate of the district in which he is found.

Certain officers, as a justice, sheriff, coroner, constable, or watchman, may arrest without warrant; and even a *private* person who is present when a felony is committed is bound by law to arrest the felon, on pain of fine and imprisonment if he escape through the negligence of the stander-by. An arrest by warrant may be made on any day, or any time of the day or night, for treason, felony, or breach of the peace.

When an offender is arrested, the justice before whom he is brought is bound immediately to inquire into the circumstances of the alleged crime, and to take the examination of the prisoner, and the evidence of those who bring him, in writing: if the charge appear wholly groundless, the prisoner must be forthwith discharged; otherwise, he must be COMMITTED, or give *bail* for his appearance to answer the accusation at the next sessions or assizes; and the prosecutor, or person injured by the crime charged, is bound over to prosecute.

To refuse, or to delay to bail any person bailable, is an offence against the statute as well as common law. Formerly, all felonies were bailable, but many offences are now excepted by statute. No justice of peace can bail upon a charge of treason, murder, arson, or manslaughter, if the prisoner be clearly the slayer, and not barely suspected to be so. But in case of other felonies committed by persons of bad character, and of notorious thieves, the justices may bail or not, at their discretion.

The court of Queen's Bench, or any judge thereof, in time of vacation, may bail for any crime; but no one can claim this benefit as a matter of right. And the house of lords may bail a peer, committed on an indictment for murder. If the party cannot obtain bail, he is committed to the county gaol, or house of correction, by the *mittimus* of the justice, or warrant under his hand and seal, containing the cause of his committal. No prisoner can be bailed for felony by less than two sureties; and the amount of bail must depend on the rank of the accused and the nature of the offence.

The next step towards the punishment of the accused is the presenting an INDICTMENT, or written accusation, against him to the *grand jury*. The grand jury is summoned by the sheriff, consisting of not fewer than twelve, nor more than twenty-three, of the principal men of the county, who are previously instructed

in the subject of their inquiries by a charge from the bench. They then withdraw to sit and receive the indictments which are preferred to them; and they are only to hear evidence on behalf of the prosecution. In common cases of felony and misdemeanor the clerk of indictments prepares the proper indictment, from the depositions that have been returned to the court by the committing magistrates: sometimes the indictment is framed by a barrister or crown-draftsman, in which case the clerk of indictments only passes it, receiving his fee as if he had drawn it: on the back of the indictment the names of the witnesses for the prosecution are written.

For expediting the proceedings of grand juries, by the 19 & 20 V. c. 54, persons attending to give evidence before them may be sworn in the presence of the jurors, and be examined on oath; and the foreman to write his initials against the name of each witness so sworn and endorsed on the bill of indictment. The word foreman includes any person acting in his name.

When the grand jury have heard the evidence for the prosecution, if they think the accusation groundless, they write on the back of the bill, *Not a true bill*; or, which is the better way, *Not found*; and then the party is discharged. But a fresh bill may afterwards be preferred to a subsequent grand jury. If they be satisfied of the truth of the accusation, they endorse upon it, *A true bill*, and the party stands indicted. The indictment is then said to be found; but, to find a bill, at least twelve of the jury must concur. So that no person can be convicted of a capital charge without the unanimous voice of twenty-four of his neighbours and equals; that is, by twelve at least of the grand jury first assenting to the accusation, and afterwards by the whole of the petit jury, of twelve more, finding him guilty.

There is another mode of carrying on a criminal process, without the intervention of a grand jury, namely, by *INFORMATION* in the name of the queen, or jointly at the suit of the queen and that of the subject. The latter is usually brought upon penal statutes, and is a sort of *qui tam* action, and carried on only by a criminal instead of a civil process. Informations in the name of the queen are filed *ex officio*, by the attorney-general, and are directed against such offenders as tend to disturb and annoy the government, and any delay in punishing which might be dangerous.

Prosecutions by the crown, for misdemeanors, whether by information or indictment, are laid under certain regulations, by the 60 G. 3 & 1 G. 4, c. 4; which provide that, in such cases, the court shall, if required, order a copy of the information or indictment to be delivered, after appearance, free of expense, to the defendant; and if the attorney or solicitor general shall not bring the issue to trial within twelve calendar months after



the plea of not guilty pleaded, the court may, on the defendant's application, of which twenty days' notice must be given to the attorney or solicitor general, allow the defendant to bring on the trial.

By 7 G. 4, c. 64, s. 19, no indictment or information shall be abated by any dilatory plea of *misnomer* or *wrong addition*, if the court be satisfied of the truth of such plea: but, in such case, the court shall forthwith cause the indictment or information to be amended, and call upon the accused to plead thereto, as if no such dilatory plea had been pleaded.

To continue the process: whether the procedure be by the previous finding of a grand jury or by information, the next step in the prosecution is the ARRAIGNMENT of the prisoner, or the calling him to the bar of the court, to answer the charge against him. When he is brought to the bar, which must be without irons or bonds, unless there be danger of an escape, he is called upon by name to hold up his hand. By holding up his hand he admits himself to be of the name by which he is called. The indictment is then read to him; after which he is asked whether he be guilty or not guilty. The prisoner usually answers *Not Guilty*; upon a simple and plain confession of guilt, the court has nothing to do but to award judgment; but it is generally backward in receiving and recording such confession; and it mostly counsels the prisoner to retract it, and plead to the indictment.

When the prisoner has pleaded *Not Guilty*, he is deemed to have put himself on his country for trial, and the court may order a jury for the trial of such person accordingly. If the accused refuse to plead, or stand mute, the court may direct the proper officer to enter a plea of *Not Guilty*, on his behalf, which has the same effect as if he had actually pleaded.

When the jury is sworn, if it be a cause of any consequence, the indictment is usually opened, and the evidence arranged, examined, and enforced by the counsel for the crown or prosecution; but, up to 1836, it was a settled rule of the common law that counsel should only be allowed to a defendant in civil actions, in misdemeanors, and in high treason, but not in *felony*. This judicial anomaly has been removed by 6 & 7 W. 4, c. 114, and persons on trial for felonies are allowed to make their defence by counsel or attorneys in courts where attorneys practise as counsel. In cases of summary proceedings, the accused may make their defence, and examine and cross-examine witnesses by counsel or attorney. Copies of depositions are also to be allowed the accused, provided application be made for them prior to the day appointed for the commencement of the sessions or assize; and prisoners under trial may inspect depositions against them without fee.

When the case for the prosecution is closed, the prisoner or

his counsel addresses the jury and examines witnesses for the defence; to which the prosecuting counsel has the right of addressing the jury in reply, if witnesses have been called for the defence, except for the purpose of proving the prisoner's character; for, if the defence rests entirely on character and cross-examination of prosecutor's witnesses, the prisoner or his counsel has the last word, and no reply is allowed to the opening counsel. The evidence on both sides being closed, the judge sums up, as in civil causes, and the jury deliberate on their verdict, and until a verdict be given they cannot be discharged. If they find the prisoner not guilty, he is liberated; but if they find him guilty, he is said to be CONVICTED of the crime whereof he stands indicted.

Upon conviction, two collateral circumstances immediately arise:—1. On conviction, or even upon acquittal, when there was sufficient ground to prosecute, the reasonable expenses of the prosecutor are to be allowed out of the county stock, if he petition the judge for that purpose. Also, persons appearing upon recognizance or subpoena, to give evidence, are entitled to their expenses, and a compensation for loss of time. 2. On a conviction of larceny, the prosecutor shall have restitution of his goods, which the judge usually orders to be immediately carried into effect, with respect to the goods brought into court.

The next stage of a criminal process is the JUDGMENT. Upon a capital charge, when a jury have brought in their verdict of guilty, in the presence of the prisoner, he is either immediately, or at a convenient time after, asked if he has anything to offer why judgment should not be awarded against him; after which, if nothing can be urged in arrest of judgment, the judge pronounces sentence.

Of the different punishments annexed to crimes we shall have occasion to speak hereafter: some are capital, and consist either in the culprit being hung by the neck till dead, or the punishment of death being recorded against him and commuted. Other sentences impose imprisonment, transportation, forfeitures, or disability from holding certain offices, or pecuniary penalties. Lastly, some punishments are chiefly ignominious, though mostly accompanied with some degree of corporal pain; as hard labour in the house of correction.

Great efforts have been made within the last thirty years to reform criminal treatment, either by the introduction of better moral discipline into prisons, or by mitigating the severity of punishments, rendering them more certain and equal in their operation, or more suitable to the refinement of the age. The practice of publicly or privately whipping females was abolished by 1 G. 4, c. 57, as also that of burning women convicted of petty treason. Hanging in chains or dissecting the bodies of murderers is prohibited, 4 & 5 W. 4, c. 26. The punishment of

the pillory is entirely abolished, 1 V. c. 23. Capital punishment has been abolished for rape, and forgery of every kind; also for sacrilege, letter-stealing, horse or cattle-stealing, house-breaking, embezzlement by servants of Bank of England and South Sea Company; for forging stamp marks on gold and silver plate; for fraudulently using old deed stamps; for riotously demolishing churches and chapels, &c.; stealing in a dwelling-house to the amount of five pounds; and for returning from transportation. The only offences to which the extreme penalty of the law is now applicable, are treason, murder, sodomy, and burglary with murderous intent, robbery and arson, either accompanied with an attempt to murder, or grievous personal violence. For the punishment of death in all these cases, except the last six, transportation for life, or lesser term, has been substituted, with the power of subjecting the offender, previously to transportation, to imprisonment in a penitentiary or house of correction for four or less number of years. In cases of transportation, the governor of a penal colony is prohibited from granting any *pardon, ticket of leave*, or remission or suspension of labour, except in cases of illness, until the convict, if transported for seven years, shall have served four; if transported for fourteen, shall have served six; or if transported for life, shall have served eight years of labour; and no convict is capable of acquiring or holding property until his freedom is obtained, 2 & 3 W. 4, c. 62. By 1 V. c. 90, in various cases of burglary and stealing, where the court had power to transport for life, the maximum term of transportation is limited to *fifteen years*. The act also prohibits any offender from being subjected to *solitary confinement* for any longer period than *one month at a time*, or than for three months in the space of a year.

The abolition of capital punishment for so many offences, and other changes in the law, have tended almost entirely to abrogate the old feudal consequences which heretofore attended the passing of sentence of death,—namely, *attainder, forfeiture of property, and corruption of blood*. Attainder and corruption of blood are now limited to murder and high treason, and forfeiture in suicide and other felonies is limited to goods and the profits of lands during the life of the offender; except in treason or murder, when the lands are absolutely forfeited. Leaving these, let us resume the course of criminal procedure. If there be no reversal of judgment, by any proceeding in error, the only remaining way of avoiding the execution of the sentence is by a **REPRIEVE OR PARDON**.

A reprieve or respite is merely a suspension of the execution, and may be either before or after judgment. If the judge is not satisfied with the verdict, or the evidence is suspicious, or the indictment is insufficient; or if it be a small felony, or any favourable circumstance appears in the criminal's character,

he may grant time to apply to the crown for entering an absolute or conditional pardon. In this case the judge sends a memorial or certificate to the queen, directed to the secretary of state's office, stating that, from favourable circumstances appearing at the trial, he recommends him to the queen's mercy, and to a pardon, upon condition of transportation or other secondary punishment.

Reprieves may also arise from natural causes, as where a woman is capitally convicted, and pleads her pregnancy. In this case the judge directs a jury of matrons to inquire into the fact, and if they bring in their verdict, *quick with child* (for, unless the child be alive in the womb, it is not sufficient), the execution is stayed, either till she be delivered, or proves, by the course of nature, not to have been with child at all. But if she prove with child a second time, she cannot have the benefit of this reprieve; for she may be executed before the child quickens, and the law will not be evaded by her incontinence.

Another cause of reprieve is, if the offender become *insane* between the judgment and execution; for, though a man be sane when he commits a crime, yet, if he become insane after, he shall not be indicted; if after indictment, he shall not be convicted; if after conviction, he shall not receive judgment; if after judgment, he shall not be ordered for execution.

The power of PARDON is vested in the sovereign, and may be granted for all offences against the crown and the public. But the sovereign cannot pardon for civil injuries, where the interest of individuals is principally concerned; nor can the queen pardon a common nuisance while it remains unabated, though she may afterwards remit the fine; nor can she pardon an offence against a penal statute after information brought, for then the informer has acquired a private property in his share of the penalty. Neither can a pardon from the crown be pleaded against a parliamentary impeachment.

A pardon must be either under the great seal, or by warrant under the royal sign manual, countersigned by one of the principal secretaries of state. A pardon may be *conditional*; as capital punishment may be commuted to hard labour, or transportation for life, or a term of years.

The last stage of criminal progress is EXECUTION, which must, in all cases, be performed by the sheriff or his deputy. The warrant for execution was anciently by precept, under the hand and seal of the judge; but the usage now is for the judge to sign the calendar, or list of all the prisoners' names, with their separate punishments in the margin: as, for a capital felony, it is written opposite the culprit's name, *Let him be hanged by the neck!*

The forms observed on this important occasion are briefly these. At the end of the assizes, the clerk of the assize makes out in writing four lists of all the prisoners, with separate

columns, containing their crimes, verdicts, and sentences, leaving a blank column, in which, if the judge has reason to vary the course of the law, he writes opposite the names of the capital convicts, to be *reprieved, respited, transported, &c.* These four calendars, being first carefully compared together by the judge and the clerk of assize, are signed by them, and one is given to the sheriff, one to the gaoler, and the judge and clerk of assize each keep another. This forms the only warrant of the sheriff for the execution, and if he afterwards receives no special order from the judge, he executes the judgment of the law in the usual manner, agreeably to the directions of his calendar. The forms observed vary a little in some counties; as, in Lancashire, no calendar is left with the gaoler, but one is sent to the secretary of state.

The practice of the Central Criminal Court has been assimilated to that of other criminal judicatories, and the recorder of the city of London is no longer required to make a report to the queen in council of the several convicts upon whom sentence of death has been pronounced.

It may be also observed, that the execution of murderers is not now required to be the next day but one after sentence passed; but the judges have the same powers granted them over the time of their execution and treatment, as in other cases of conviction for capital offences.

The sheriff cannot alter the mode of punishment, by substituting one kind of death for another, without being guilty of felony. It is held by Sir E. Coke and Sir Matthew Hale, that even the sovereign cannot change the punishment by altering the hanging into beheading, though, when beheading is part of the sentence, he may remit the rest.

If, upon judgment to be hanged till dead, the criminal be not thoroughly killed, but revives, the sheriff must hang him again, for the former hanging was no execution.

## CHAPTER IV.

### *Procedure and Reforms in Chancery.*

SOME efforts were made to lessen expense and expedite proceedings in the Court of Chancery in 1850 and 1851, by allowing suitors to state special cases for the opinion of the court and for the establishment of a Court of Appeal (see p. 34). But the more general and effective measures of reform in this branch of judiciary, were three acts of the session of 1852. The first of these acts, 15 & 16 V. c. 87, relates principally to the officers of the court, who, when the lord chancellor shall direct, are to be paid by salaries instead of by fees, and the fees are to be

collected by stamps on documents. Fees paid to the judges are to be commuted by salaries, as well as the brokerage received by the accountant-general. The offices of keeper of the hanaper, sealers, chaff-wax, crier, clerk of reports, and others, are abolished, such officers receiving compensations. The account of moneys of suitors of the court kept at the Report office is to be discontinued, and the offices of clerks of accounts abolished. The allowances for copying to cease, and the lord chancellor to make regulations as to copies.

A more important statute is the 15 & 16 V. c. 86, to *Amend the Practice and Course of Proceeding in Chancery*, and which commenced Nov. 1, 1852. Under this act the practice of engrossing bills on parchment was discontinued, and a printed bill filed instead. Writs of subpoena and summons were abolished, and defendants were to be served with a printed bill instead. The plaintiff is to deliver to defendant such a number of copies of the printed bill as he shall have occasion for, defendant paying for them at such rate as shall be prescribed by a general order; and this provision extends to amendments of bills. The lord chancellor may suspend the provisions as to the printing and filing of bills, when former practice will be revived. Bills of complaint are to contain concise narratives of material facts, divided into numbered paragraphs, but not to contain interrogatories, and interrogatories are to be filed in the Record office within a prescribed time. Defendants may answer without leave within the time now prescribed, but after that time they must have leave. The defendant's answer may contain not only an answer to his case, but statements material thereto. The plaintiff may, on expiry of time for answering, but before replication, move for a decree or decretal order, which the court may grant or refuse. The practice of excepting to bills and answers for impertinence is abolished. The court may order defendant to produce documents on oath, and plaintiff may also be required to produce documents after the answer has been put in. The defendant may in certain cases file interrogatories for the examination of the plaintiff, or he may exhibit a cross bill instead. The practice of issuing commissions to take answers, pleas, disclaimers, and examinations, is abolished, and these documents may be filed without any more formality than is now required in the swearing and filing of an affidavit. In Scotland and Ireland, the Channel Islands, or British Colonies, they may be sworn and taken before any judge, or person lawfully authorized to administer oaths, and in foreign ports before her majesty's consul or vice-consul.

In the examination of witnesses important changes were introduced. The previous mode of examination was abolished, leaving power, however, to the court to order particular witnesses to be examined by interrogatory, and the evidence to

be taken orally if required by either party, power being reserved to the court, if the requirement be by a party who has not sufficient interest, to make such an order as may be just. The witnesses are to be examined by one of the examiners of the court in presence of the parties, and be subject to cross-examination or re-examination. The depositions are to be read over to the witness, who shall sign the same, and, if he refuse, the examiner may sign them, and state such special matter as he may think fit. The original depositions are to be filed in the Record office. Notwithstanding, however, that the parties may have elected to examine orally, affidavits by particular witnesses or as to particular facts may by consent or leave of the court be used on the hearing of any case; but the witnesses by affidavit are to be subject to oral cross examination and re-examination. The court may require the production of oral examination before itself of any witness, and determine as to the payment of costs.

With regard to the *hearing* of causes, there are a number of provisions to prevent delay on technical grounds. One is that a defendant is not to take an objection for want of parties in any case to which certain rules set forth in the act extend, the object of these rules being to prevent mere technical objections; and the practice of setting down a cause merely on objection for want of parties is abolished, and the court is empowered to proceed without the representative of a deceased party being made a party, or it may appoint such representative.

Suits are not to be dismissed for misjoinder of plaintiffs, but the court may modify its decree according to special circumstances; and the court may decide a suit, although only some of the parties interested are parties to it; but if the court is of opinion that the application is fraudulent or otherwise, it may refuse to make the order prayed. In case of abatement of the suit, or its becoming defective by reason of some change or transmission of interest or liability, an order may be made which shall have the same effect as a bill of revivor. Supplemental bills, for the purpose only of stating or putting in issue new facts or circumstances, cease to be required; but such matters may be introduced by way of amendment into the original bill, or the plaintiff may state such facts or circumstances on the record.

Where an account is to be taken, the court may give special directions as to the mode of taking it.

In administration suits the proceeding was much simplified, provision being made that a creditor, or legatee, or one of the next of kin, may summon an executor to show cause why an order for the administration of the personal estate of a deceased person should not be granted, and the judge has power thereupon to order such administration. An order for the administration of the real estate may be obtained in a similar manner

by a creditor or any one interested under the will of the deceased.

The court may direct a sale of mortgaged property instead of a foreclosure, on such terms as it may think fit. The court may order real estate to be sold, if required; and, where real or personal estate is the subject of proceedings, it may allow to parties a portion or the whole of the annual income.

The practice as to injunctions to stay proceedings at law is to be assimilated to the practice as to special injunctions.

Another provision, tending essentially to diminish the cost and delay of suits in many cases, was one which directs that cases are not to be stated for the opinion of a court of common law, but the court of chancery is to have full power to determine any questions of law.

The expense and delay of suits were much lessened by another act, the 15 & 16 V. c. 80, by which the office of masters in chancery was abolished, and provision made for the transfer of the business heretofore disposed of by them to be transacted by and under the immediate direction and control of the court. The master of the rolls and the vice-chancellors are to sit at chambers for the dispatch of such business as can, without detriment to the public advantage, arising from the discussion of questions in open court, be heard in chambers, and they are to have the same power and jurisdiction in chambers as in open court.

The judges may adjourn from open court to chambers, or the contrary, the consideration of any matter; the mode of proceeding by chambers to be by summons, as at common law, and the judges may direct what shall be investigated by their chief clerks and what by themselves. The result of the proceeding before the chief clerk is to be embodied in the form of a certificate, to which there is to be no exception; but the parties may take the opinion of the judge on any particular point arising in the course of the proceedings, or upon the result. Judges may take the opinion of conveyancing counsel when sitting at chambers, and the lord chancellor may nominate six conveyancing counsel, whose opinions are to be thus taken. The judges may also obtain the assistance of accountants, merchants, engineers, actuaries, or other scientific persons, and act upon their certificate. By s. 60, a retiring lord chancellor may deliver written judgments within six weeks after his resignation.

**RESULTS OF CHANCERY REFORM.**—The general and practical effects on a suit in chancery produced by the above acts, and the rules and orders which were founded upon them, and issued in the August following, may be summarily recapitulated.

Previously to the alterations, a suitor in equity commenced his proceedings by filing a bill of complaint written on parchment, and summoning the parties against whom he proceeded by



means of writs of subpoena to appear and defend themselves. Beyond the fact that a bill had been filed, which he was required to answer, a defendant in chancery could know nothing of the nature of the proceeding against him until he had taken, at considerable cost, an office-copy of the bill; and, practically, each defendant had to take an office-copy. Then, after an interval of time, the defendant had to put in his answer to the bill, though perhaps he admitted or denied all the allegations of the bill, or had no knowledge, one way or the other, about any of them. But whether informed or not on the questions asked, the defendant had to answer; for the practice, under a general order, of serving a copy of the bill, had only a limited application. Then of every answer, pertinent or not, the plaintiff had to take an office-copy; and the accumulation of paper in suits involving many details, or much documentary matter, or to which there were many defendants, often became perfectly overwhelming. Then the power a plaintiff had to compel a defendant to set forth in his answer, in so many words, lengthy accounts and documents, was mostly made an engine of much oppression, especially in mercantile accounts, the stationer's charge, in some instances, for making a single copy, amounting to £120. All this vexation has been changed, or greatly mitigated.

According to the amended practice, the plaintiff prepares his bill conformably to a concise form given in the new orders; which he must have printed "on writing royal paper, quarto, in pica type, leaded," with blank paper of the same kind interleaved; and this is to be filed with the clerk of the records. Instead of serving a subpoena, a writ of summons suffices, and the plaintiff must then serve each defendant with a printed copy of the bill, on which is an indorsement informing him when he must appear, and the consequences of his non-appearance; such copy having been authenticated by the stamp of the record clerk. The bill is to contain no interrogatories; but if the plaintiff require an answer from any defendant, separate interrogatories may be filed for the examination of the defendant within eight days after the time limited for the defendant's appearance. Each defendant is entitled to demand ten printed copies of the bill from the plaintiff, at a fixed price, one halfpenny per folio of ninety words. Thus the bill having been once printed, all the various parties to the suit have the benefit of this convenient form in every stage of the proceedings; and though in some cases the first cost to the plaintiff of printing the bill may rather exceed that of a single written bill, yet in the end—the unsuccessful, as a rule, having to pay ultimately all the costs—the saving at the termination of the suit will most likely be very considerable. If amendments or additions are required to be made to the bill, they

are to be printed and served in the same way as the original. The Orders give a concise form for answers. But if no answer is required by the plaintiff, or thought necessary by the defendant, he merely files a replication, and leaves the plaintiff to prove his case in the best way he can. At the end of three months, if the plaintiff has not proceeded with his suit effectually, so as to bring it to a hearing, the defendant may move to dismiss the bill for want of prosecution; when the court may make such order as may be just and reasonable. Thus, a defendant can never have a suit hanging over him more than three months, unless there be substantial and active proceedings in the cause.

In lieu of former fees payable to solicitors, the following were ordered:—For instructions for a bill, £1 14s.; making a copy of ditto, per folio, 4d.; correcting the proof sheet, per folio, 2d. amending each copy of a bill or claim to serve, where there is no reprint, 13s. 4d.; instructions for brief to be allowed on a replication being filed, or on a motion for a decree on a bill, or in an injunction cause on moving for the injunction, one guinea (but to be charged once only in the progress of a cause); amending each brief of a bill or claim, when there is no reprint, 13s. 4d.; perusing and considering the bill on behalf of defendant, or set of defendants appearing by same solicitor, one guinea.

In many cases the object is to get a speedy *hearing*; probably there is little or no dispute as to facts, and all that is wanted is the decision of the court on legal questions. In other cases, again, prompt decision is of the essence of justice. This was provided for: when the defendant's time for answering has expired, the plaintiff may move for a decree, giving a month's notice and previously filing all the affidavits he means to use, and giving at the foot of his notice a list of such affidavits. In fourteen days the defendant must file his affidavits in answer, giving his opponent a list of them, who has seven days more to file affidavits, which must "be confined to matters strictly in reply."

When no such motion for a decree is made, but issue is joined, either party may give notice of his intention to examine the witnesses orally, when that mode of taking the evidence is to be adopted; but where neither party requires oral examinations, the evidence will be given by affidavits.

Under such an improved procedure, it is obvious that with the reciprocal power plaintiffs and defendants have of forcing on suits to a termination, and with the necessity both parties are under of proceeding promptly, a chancery suit can take no longer time than may be due to the substantial merits and difficulties of each case. When to this is added the abolition of the masters' offices, and the substitution of the judge before

whom the whole cause has to be heard, as the functionary by whom all incidental questions arising in the progress of the suit are to be decided, and the great reduction of fees payable by suitors, the court of chancery was made, much more than formerly, a fountain of prompt and speedy justice.

## CHAPTER V.

### *Summary Convictions.—Recognizance.*

BESIDES the general modes of proceeding in civil, equity, and criminal cases, described in the last three chapters, there is another form of judicial procedure by summary conviction before justices of peace, which it may be proper briefly to mention before concluding the outlines of judicial administration.

By summary proceedings are principally meant such as are directed by several acts of parliament for the conviction of offenders, and the infliction of penalties created by those acts of parliament. In these there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed for his judge.

Of this summary nature are all trials of offences and frauds contrary to the laws of the excise, and other branches of the revenue, which are inquired into by the commissioners of the respective revenue departments, or by justices of the peace in the county where they occur.

Another extensive branch of summary process is that before justices of the peace, in order to inflict divers petty pecuniary fines and corporal penalties, denounced by act of parliament for any disorderly offences; such as poaching, malicious mischief, common swearing, drunkenness, vagrancy, idleness, and a vast variety of others, all of which formerly used to be punished by the verdict of a jury in the court leet.

The process is extremely brief: after summoning the offender, the magistrate proceeds to examine one or more witnesses, as the statute may require, upon oath: he then makes his conviction in writing, upon which he usually issues his warrant, either to apprehend the party, in case corporal punishment is to be inflicted on him, or else to levy the penalty incurred, by distress and sale of goods.

By the 18 G. 3, c. 19, justices out of session are also empowered to award costs against either the person complaining or the person against whom the complaint is made; which, if not paid, may be levied by distress; or, if no distress can be had, such person may be committed to hard labour for any time not less than ten days, nor more than a month.

From these convictions there is no *appeal*, unless it be expressly given by the statute; but the party has in general a right

to a certiorari to remove the conviction into the court of Queen's Bench. When an appeal is given to the sessions, the magistrates should make known to the convicted party his right to appeal, but if he decline appealing, they are not required to inform him of the necessary steps to be taken to appeal. Upon an appeal the magistrates are bound to receive any fresh evidence, though not tendered on the former hearing. 3 *M. & S.* 133.

The defendant is entitled to require a copy of the conviction from the convicting magistrate.

When an appeal is allowed, the conditions or directions respecting such appeal must be strictly complied with; and the appeal must be to the next quarter sessions of the jurisdiction in which the conviction takes place, unless otherwise specially appointed by the statute giving the right of appeal.

These summary proceedings are unknown to the common law, and appear to have arisen from the increase of population, the multiplicity of our fiscal regulations, the demoralization of juvenile delinquents from protracted imprisonment with older offenders before trial, and the expense and delay of bringing a number of petty offences before the regular tribunals of criminal judicature.

By 5 & 6 V. c. 38, the justices holding sessions of the peace are not allowed to convict for any capital felony, or felony (unless the accused has been previously convicted) subjecting to transportation for life; nor for offences against the queen or parliament; nor for blasphemy, administering unlawful oaths, bigamy, abduction, seditious or blasphemous libels.

For the more speedy trial of *juvenile offenders*, and to avoid the evils of their long imprisonment before trial, it is enacted by 10 & 11 V. c. 82, extended by 13 & 14 V. c. 37, that persons not exceeding sixteen years of age, guilty of any theft that the law considers simple larceny, of aiding in its commission, may be summarily convicted, by two justices, and sentenced to imprisonment for not exceeding three calendar months, with or without hard labour, or to forfeit any sum not exceeding £3, or, if a male, may be once privately whipped, either instead of or in addition to such punishment; or the whipping, inflicted by a constable, may be out of prison. But offenders under these acts above fourteen are not liable to whipping. Justices may dismiss the accused if they deem it expedient not to inflict any punishment, with or without sureties for future good behaviour, giving the accused a certificate of such dismissal as a bar to future proceedings. Justices are required to ask the accused if they wish the charge to be tried by a jury; if either accused or parents object to a summary conviction, justices to proceed with the case as before the acts. One police justice of the metropolis, or stipendiary magistrate elsewhere, has jurisdiction. Justices may order restitution of stolen property.

## RECOGNIZANCE.

The law has provided a method for the prevention of crimes as well as punishing them when committed. This preventive justice consists in obliging persons whom there is reason to suspect of future misdeeds, to enter into a *recognizance* to keep the peace, or be of good behaviour.

A recognizance is an obligation, with one or more sureties, entered into before a court of record, or magistrate duly authorized, to do some specific act, as to appear at the sessions, keep the peace, or the like. In default, the recognizance is forfeited to the queen, and the party and his sureties may be sued for the sums in which they are respectively bound.

Justices of peace may demand security at their own discretion, or it may be granted at the request of a private individual, upon due cause shown. Wives may demand it against their husbands, or husbands, if necessary, against their wives.

Justices may bind a person over for offences against good manners, as well as against the peace; as for haunting bawdy-houses, or keeping women of bad fame in his house, or for words tending to scandalize the government, or in abuse of the officers of justice. Also justices may bind over all eaves-droppers, reputed thieves, common drunkards, cheats, or vagrants. It is even held, though of dubious authority, that justices may demand bail of persons charged with *libel* before the indictment is found, *Butt v. Conant, B. & C. 548.*

With respect to the exhibition of *articles of the peace*, there ought to be a reasonable foundation, on the face of the articles, to induce a fear of personal danger, before sureties of the peace will be required, 13 *E. R. 172.* The court may require bail for such a length of time as they shall deem necessary for the preservation of the peace, and are not confined to a twelvemonth, *Rex v. Bowes, 1 T. R. 696.*

A recognizance may be forfeited by the commission of any of those acts which the party is bound to refrain from; or it may be discharged, either by the demise of the queen, to whom the recognizance is made, or by the death of the principal party; or by the order of the court to which it is certified; or in case he at whose request it is granted, if granted upon a private account, will release it, or does not make his appearance to pray that it may be continued.

By 7 G. 4, c. 64, no recognizance is to be estreated without the written order of the justice, recorder, corporate officer, chairman, or justices of peace, to whom a list of forfeited recognizances must be submitted by the officer of estreats.

## CHAPTER VI.

*Juries.*

THE trial by jury, or the empanelling of an assembly of men to inquire into alleged facts, and bound by oath to a faithful discharge of their duty, is mostly deemed one of the most ancient and salutary institutions which has descended from a remote period, for the preservation of the persons and properties of the people. By 6 G. 4, c. 50, several abuses which had crept into the jury system were removed, and the institution placed on such a basis as better to insure the fair and independent discharge of its judicial functions. In the course of the chapter we shall incorporate the provisions of this statute, as well as retain the customs and practices not affected by the act, and thereby exhibit the present state and constitution of juries.

## JURY LISTS.

According to the Jury Act, the churchwardens and overseers of the poor are required to make out an alphabetical list, before the 1st of September in each year, of all men residing in their respective parishes and townships, qualified to serve on juries, setting forth at length their christian and surname, the place of abode, the title, profession, or business, and the nature of the qualification of each individual.

Copies of these lists, on the first three Sundays in September, are to be affixed on the principal door of every church, chapel, and other public place of religious worship, with a notice subjoined, that all appeals will be heard at the petty sessions, to be held within the last seven days of September in each year, mentioning the day and place of holding such session.

For the purpose of correcting and completing the jury lists, the churchwardens and overseers may, between the 1st of July and the 1st of October, by application to any collector or assessor of taxes, or other officer, inspect any duplicate or assessment, and thence take the names of jurors.

The list so prepared is to be kept by the clerk of the peace, and to be copied into a book, which is to be delivered to the sheriff, and to be called "*The Jurors' Book.*" This book, which is to be used for one year, commencing the 1st of January, every sheriff is to deliver to his successor in office; and from it the sheriffs, coroners, and other officers are to select the jurors.

Penalties are imposed on any of the officers neglecting or refusing to discharge their respective duties in the formation of the jury lists.

## QUALIFICATIONS OF JURORS.

With the exceptions hereafter specified, the following persons are now qualified to serve on juries, for the trial of all issues, civil and criminal, in the queen's courts at Westminster, and at the assizes, and on grand and petty juries in the courts and sessions of the peace, in the county, riding, or division where they respectively reside.

1. Every man between the age of twenty-one and sixty years, residing in England, having, in his own name, or in trust, £10 per annum of clear yearly income, arising from lands and tenements, whether freehold, copyhold, customary tenure, or ancient demesne; or rents issuing thereout in fee simple, fee tail, either for his own or other person's life; or such income or rents jointly issuing, amounting together to the clear yearly value of £10.

2. Every man having £20 a year clear, from lands or tenements held, *by lease*, for twenty-one years or upwards, or for any term determinable on any life or lives.

3. Householders assessed to the poor rate, or to the inhabited house duty, in the county of Middlesex on a value of £30; in any other county, £20.

Lastly, persons occupying any house containing not less than fifteen windows.

Persons residing in Wales are eligible to serve on juries who are qualified to the extent of *three-fifths* of any of the foregoing qualifications.

The following are exempt from serving on all juries and inquests whatever.

Peers, judges, councillors, attorneys, proctors, coroners, gaolers, and keepers of houses of correction; clergymen in holy orders; Roman Catholic priests, having taken the oath required by law; dissenting ministers, whose places of worship are registered, and who follow no secular occupation, except that of schoolmaster; police magistrates and commissioners of the metropolis; officers of the army and navy on full pay; physicians, surgeons, and apothecaries duly licensed and actually practising; servants of the royal household; pilots licensed, and masters in the buoy or light service; officers in the customs, post-office (10 *Bing.* 399), and excise; officers of courts of justice actually exercising the duties of their offices; sheriffs' officers, high constables, and parish clerks.

It was also determined, in the session of 1826, that members of the house of commons are privileged from serving on juries while attending their duties in parliament, *Parl. Paper*, No. 71.

No man, not being a natural-born subject, is qualified to serve on juries or inquests, except in the case of the trial of aliens; nor any person convicted of any infamous crime, un-

less he have obtained a free pardon ; nor any man under sentence of outlawry or excommunication.

No justice shall serve on any jury at the sessions for the jurisdiction of which he is a justice.

*After serving*, and obtaining the sheriff's certificate, persons are free from again serving on juries, for certain periods ; in the counties palatine, or the principality of Wales, or in Hereford, Cambridge, Huntingdon, or Rutland, for *one* year ; in the county of York for *four* years ; in any other county, except Middlesex, *two* years.

Sheriffs are required to register the service of jurors at the assizes, and to give certificates of service, on payment of one shilling ; but this regulation does not extend to grand or special jurymen.

No one is qualified to serve on a sheriff's or coroner's inquest, upon a *writ of inquiry*, who is not qualified to serve on a *nisi prius* jury ; but this does not extend to inquests taken *ex officio* ; nor to any city, borough, liberty, or town corporate, in which the usual method must be observed.

#### SUMMONING OF JURORS.

The summons of every common juror must be, at least, ten days before he has to attend, and of every special juror, three days before he has to attend ; but this does not extend to the city of London nor the county of Middlesex.

The *panel*, which is an oblong piece of parchment, must, for the trial of causes, contain the names, alphabetically arranged, with the places of abode, and additions of a competent number of jurors ; which number of jurors, in any court, must not be less than forty-eight, nor more than seventy-two, unless by the direction of the judges, who are empowered to direct a greater or lesser number.

Judges may direct the sheriff to summon not more than 144 jurors to attend the assizes on their respective circuits, to serve indiscriminately on civil and criminal trials ; which jurors are to be divided into two sets, one of which is to attend at the beginning, the other at the end of the assizes ; the sheriff informing each juror, in his summons, to which set he belongs, and at what time his attendance will be required. Jurors not attending, without reasonable excuse, when summoned, may be fined by the court.

A copy of the panel is to be kept in the sheriff's office, for the inspection of the parties and their attorneys, who are entitled to inspect the same without fee or reward.

The names of the jurors summoned, being written on tickets, are put into a box, and, when each cause is called, twelve of the persons whose names are first drawn are sworn on the jury, unless absent, challenged, or excused, or unless a previous *view*



of the subject in issue shall have been thought necessary by the court; and then the jurors who have had the view shall be sworn prior to any other jurors.

The oath of a juror is "well and truly to try the issue between the parties, and a true verdict give, according to the evidence." The same jury may try several issues, unless objected to by the judge or either of the parties; in that case, a fresh jury is drawn from the box, from the remaining names on the panel.

#### CHALLENGE OF JURORS.

On the jurors' names being called, they may be challenged or objected to by the parties, as improper persons to form the jury. Challenges are of two kinds; challenge to the *array*, and challenges to the *poll*.

Challenge to the *array* is an exception at once to the whole panel, which may be on the ground of partiality, or default in the sheriff, or his deputy, who arrayed the panel. Or the array may be challenged because one of the parties is an alien, so entitled to a jury of one-half foreigners.

Challenges to the *poll* are exceptions to particular individuals, and may be made on several accounts. 1. That a juror is an alien. 2. That he is not duly qualified according to the statute. 3. That he has been an arbitrator in the cause, has received money for his verdict, or is related to or employed by one of the parties. 4. That he is infamous or degraded in law. 5. Challenges may be made to the *favour*, as where the party has no direct cause of challenge, but objects only to some suspicious circumstance, as acquaintance or the like, the validity of which must be determined by *triers*, or two indifferent persons chosen by the court, whose office is to decide on the impartiality of the juror objected to. And, lastly, a juror may challenge himself, on the ground of his title, office, profession, or some other of the causes of exemption before enumerated.

In trials of treason or felony, a juror may be challenged by the prisoner without assigning any cause, which is called a *peremptory challenge*; and is an indulgence granted the accused in tenderness to those sudden impressions and unaccountable prejudices which persons are apt to conceive on the bare look and gesture of a stranger; but to such a capricious and undefined ground of objection some reasonable limit must be assigned. This is settled by the common law at thirty-five, that is, one under the number of three full juries. And by the Jury Act, no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of *twenty*; but, in cases of treason, the prisoner is still allowed thirty-five peremptory challenges.

If by means of challenge, or other cause, a sufficient number

of unexceptional jurors do not appear at the trial, either party may pray *tales*; in that case, the sheriff adds to the names on the panel such proper persons as are present in court, or may be first found; and the persons so added are subject to the same challenges as the principal jurors.

#### SPECIAL JURIES.

Special juries were originally introduced in trials at law, when the causes were of too great nicety for the adjudication of ordinary freeholders; or where the sheriff was suspected of partiality, though not on such valid ground as to warrant an exception to him. Either party is entitled, upon motion in court, to have a special jury in the trial of any cause, whether civil or criminal, or on any penal statute, excepting only indictments for treason and felony; the party demanding the special jury paying the extra fees and expense, unless the judge certifies on the record that the cause required such special jury.

By the Jury Act, every man described in the jurors' book as an esquire, or person of high degree, or as a banker or merchant, is qualified to serve on special juries; and the sheriff is bound to enter all such persons, in alphabetical order, in a separate list, subjoined to the jurors' book, to be called "The Special Jurors' List:" and shall prefix to every name its proper number in regular arithmetical series, which numbers, marked on tickets, shall be put in a box.

When a special jury is awarded, the parties, with their attorneys, if they choose to attend, shall wait on the proper officer, who, having shaken the numbers in the box together, shall draw out forty-eight of the numbers, one after another, referring each number as drawn to the corresponding number in the Special Jurors' List, and reading aloud the name designated by such number. If either party, or his attorney, object to the name drawn as incapacitated, and prove the same to the satisfaction of the officer, the name is set aside, and another number drawn, and so on till the number forty-eight is completed. But, if the forty-eight names cannot be obtained from the Special Jurors' List, the officer shall fairly and indifferently take such a number of names from the Common Jurors' List as will make up the full number forty-eight. The officer then furnishes a list of the names, places of abode, and additions of the jurors, to each party, who respectively strike off twelve, and the remaining twenty-four are returned upon the panel.

If any of the special jurors are absent on the trial, the ~~talesmen~~, to complete the number, must be taken from the common jury panel. No *tales* can be prayed where all the special jurors are absent.

The old method of nominating a special jury may be followed by the mutual consent of the parties.

Special jurors may receive such a sum of money as the judge shall think reasonable, not exceeding *one guinea*, except in causes where a *view* is directed. All fees heretofore taken are continued by the Jury Act.

A rule for a special jury must be served sufficiently early to enable the opposite party to strike the jury before the day of trial; and, therefore, when the rule was served at six o'clock the evening preceding the day fixed for the trial, it was held the case was properly tried by a common jury, *Gunn v. Honeyman*, 2 B. & A. 400.

The same special jury, by consent of parties, may try any number of causes; but the court may, on application from any man who has served, discharge him from serving upon any other special jury during the same assize or session.

By 15 & 16 V. c. 76, the precept by the judges of assize to the sheriff shall direct him to summon jurors both for civil and criminal trials. Special jurors, not exceeding forty-eight in number, are to be summoned to try all special jury causes at assizes; parties on notice to be entitled to have causes tried by special jury in any county except London or Middlesex, in which places special juries are to be nominated and struck as at present on obtaining a rule.

#### LONDON AND MIDDLESEX JURIES.

In London and Westminster, every householder, or occupier of a shop, warehouse, counting-house, chambers, or office for the purpose of trade, having lands, tenements, or personal estate, of the value of £100, is qualified to serve on juries.

The list of qualified persons, resident in each ward of the city of London, must be made out, with the proper quality or addition, and the place of abode of each man, by the parties hitherto accustomed to make out such lists; the shop, warehouse, counting-house, chambers, or office of each person so qualified, to be deemed the place of abode for the purposes of the act.

Lord Tenterden decided, provided a person's family is domiciled in the city, though he is not in trade, but holds a public office, nor a householder, occupying only part of a house, he is qualified to serve on a special jury in London, *K. B. Guildhall*, Jan. 9, 1827.

Six days are allowed between summons and appearance in London and Middlesex.

The sheriff of the city of London cannot return any juror to serve in the courts at Westminster.

Persons summoned to serve on juries in any of the inferior courts of record in London, or in any other liberty, city, borough, or town, not attending, shall forfeit not more than 40s.,

nor less than 20s., unless the court be satisfied with the cause of absence. Such fine is leviable by distress and sale.

No cause can be tried by a special jury in London or Middlesex, unless the rule for such special jury be served, and the cause marked in the marshal's book as a special jury cause, on or before the day preceding the adjournment day, in Middlesex or London respectively, *Reg. Gen. H. T.* 44.

In the common pleas the rule must be served, and the cause marked in the marshal's book, two days preceding the adjournment day, 4 *Taunton*, 601.

No person is liable to serve on juries at any session of *nisi prius*, or gaol delivery in Middlesex, who has the sheriff's certificate of service at either of such sessions, for either of the two terms or vacations next preceding.

#### DUTIES OF JURORS.

After a juror is sworn, he must not go from the box till the evidence is given, for any cause whatever, without leave of the court; and, with leave, he must have a keeper with him.

If, after the jury have withdrawn from the box to consider their verdict, they have meat, drink, fire, or candle, without consent of the court, and before verdict, they are finable; and if at the charge of him for whom they afterwards find, it will set aside the verdict; also, if they speak with either of the parties, or their agents, after they retire from the box; or if, to prevent disputes, they cast lots for whom they shall find: any of those circumstances will entirely vitiate the verdict, and they are finable.

When the jury have left the box, no new evidence can be introduced, nor can they recall a witness and make him repeat his evidence; for though he give no more evidence than he had given in court, the verdict will not be allowed, *Cro. Eliz.* 189. But they may have a witness recalled to repeat his evidence in open court.

The jury cannot retire with any writing not given in evidence in open court.

The jury are allowed to judge of the meaning of *mercantile phrases* in the letters of merchants, 7 *Taunt.* 164.

If, after the charge and evidence given on a capital offence, one of the jurors become suddenly ill, the court may discharge the jury, and charge a fresh one with the prisoner, and convict him, 4 *Taunt.* 309.

When a *criminal* trial runs to such a length as it cannot be concluded in one day, the court, by its own authority, may adjourn till the next morning; but the jury must be somewhere kept together, that they may have no communication but with each other, 6 *T. R.* 527. In treason or felony the jury is usually permitted to retire in custody of the sheriff and his officers,

who are sworn to keep them together, and not to speak to them on matters relating to the pending trial. In misdemeanors the jurors may be allowed to go home, on engaging not to allow themselves to be spoken to on the subject of the trial. In *civil cases*, too, a jury may separate; but after the judge has summed up they cannot, 2 *Bar. & Ald.* 462. The judge has power to discharge a jury who cannot agree in a civil or criminal case, and in a criminal case may discharge the jury when a material witness is absent.

A verdict may be either *general* or *special*. A *general* verdict is absolute and without reserve, both as to the question of law and fact, either for the plaintiff or defendant. A *special* verdict simply specifies the facts as they find them to be proved, reserving the question of law for the adjudication of the court. A special verdict may be found, both in civil and criminal cases. The minutes of a special verdict must be approved by the judge, and ought to be signed by one of the counsel of each party.

#### JURIES IN SCOTLAND.

An experiment is being made in Scotland of allowing a verdict to be given by juries, though not unanimous. By 17 & 18 V. c. 59, if upon the trial of any civil cause the jury is unable to agree, and if after six hours' deliberation, nine of the jury agree, the verdict of such nine may be taken. Pending deliberation, the jury, with leave of the judge, may be furnished with necessary refreshment.

### CHAPTER VII.

#### *Evidence.*

EVIDENCE is used in law for some proof, by writing, or by testimony of witnesses, on oath; and it is called evidence, because the question at issue is thereby to be made evident to the jury. Written proofs consist of records, ancient deeds, and wills thirty years old, which prove themselves; but modern deeds and other writings must be attested and verified by the parol testimony of witnesses.

One general rule in all trials is, that the best evidence the nature of the case will admit of shall always be required, if possible to be had, but, if not possible, then the next best evidence that can be had shall be procured: for, if it be found that there is any better evidence existing than that produced, the not producing it affords a presumption that it would have detected some falsehood that is concealed.

Thus, in order to prove a lease for years, nothing shall be

admitted but the deed of lease itself; but if that be positively proved to be destroyed or lost, then an attested copy may be produced, or parol evidence be given of its contents. So no evidence of a discourse with another will be admitted, but the party himself must be brought forward; yet, in some cases, the court allows *hearsay* evidence to be adduced, as in proof of any general custom or tradition, or of what deceased persons have declared in their lifetime. But the bare recital of a fact, that is, the mere oral assertion or written entry, by an individual, that a particular fact is true, cannot be received in evidence. This objection does not apply to any public documents made under lawful authority: such as gazettes, proclamations, public surveys, records, and other memorials of a similar description.

Letters of individuals are evidence *against* the writers, but not for them. Private memoranda made by a person deceased are admissible evidence. So are the books of a steward or collector, evidence against himself and his estate, after his death. Entries in family Bibles, Prayer, or other books, by parents or heads of families, are good evidence of the facts recorded. A *receipt* is not such conclusive evidence against the party signing it, but he may show that he did not receive the sum or thing mentioned therein. But *receipts in full*, when obtained without fraud or collusion, are conclusive against the party signing them.

*Tradesmen's books* are not admissible evidence in favour of the owner, nor against a customer, unless accompanied with proof of delivery of goods or other corroborative particular; but a servant who made the entry may have recourse to them to refresh his memory; and if the servant who was accustomed to make entries be dead, and his handwriting be proved, the book may be read in evidence: for as tradesmen are often under the necessity of giving credit without any note or writing, this, therefore, when accompanied with such other collateral proof of fairness and regularity, is the best evidence that can then be procured. But as evidence of this kind would be much too hard upon the buyer at any long distance of time, the law confines this sort of proof to such transactions as have happened within *one year* before the action brought, unless in transactions between merchant and merchant, in the usual course of trade.

By 17 & 18 V. c. 125, s. 27, the comparison of a *disputed writing* with any writing proved to the satisfaction of the judge to be genuine, is permitted to be made by witnesses; and such writing, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

LORD BROUGHAM'S ACT.—An act of 1851 introduced important changes both in relation to the compelling of interested

persons to give evidence, and the admission and verification of documents. The parties admissible to be witnesses are described by this act, 14 & 15 V. c. 99, ss. 2, 3, enacting that, "On the trial of any issue joined, or of any matter or question, or on any inquiry arising on any suit, action, or proceeding in any court of justice, or before *any person having by law* or by consent of parties authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall be competent and compellable to give evidence, either  *viva voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding, s. 2. But nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself," s. 3.

By s. 6, common law courts are authorized to compel inspection of documents whenever equity would grant discovery. Foreign and colonial acts of state, judgments, decrees, orders, and other judicial proceedings, provable by certified copies, without proof of seal, signature, or judicial character of person signing the same. Certificate of the qualification of an apothecary admissible without proof of the seal of the Apothecaries' Company. Documents admissible in England without proof of the seal or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, equally admissible in Ireland, or *vice versa*. Like co-admissibility extended by s. 11 to the colonies. Registers of British vessels and certificates of registry admissible as *prima facie* evidence of their contents, without proof of signature. Where necessary to prove conviction or acquittal of any person charged, not necessary to produce record, but it may be certified under hand of clerk of court. Examined or certified copies of documents admissible in evidence. Certifying a false document is a misdemeanor, punishable by imprisonment for any term not exceeding eighteen months. Every court, judge, justice, officer, commissioner, arbitrator, or other person now or hereafter having by law or consent of parties authority to hear and examine evidence, may administer an oath to all such witnesses as are legally called before them.

The 16 & 17 V. c. 83, extends the Evidence Act, by rendering the husbands and wives of parties to any judicial issue or inquiry admissible witnesses, competent and compellable to give evidence on behalf of either or any of the parties to the suit. But by s. 2, no husband is competent or compellable to

give evidence for or against his wife, or the wife for or against the husband, in any *criminal proceeding*, or in case of adultery. No husband is compellable to disclose any communication made to him by his wife during the marriage, nor any wife to disclose any communication made to her by her husband during the marriage, s. 3. Nothing herein contained shall apply to any action, suit, proceeding, or bill in any court of common law, or in any ecclesiastical court, or in either house of parliament, instituted in consequence of adultery, or to any action for breach of promise of marriage, s. 4.

A second description of evidence is that by WITNESSES.

All witnesses, of whatever religion or country, that have the use of their reason, are to be received and examined, except such as are *infamous*. All others are competent witnesses, though the jury from after circumstances will judge of their credibility. *Infamous* persons are such as may be challenged as jurors, on account of some delinquency, as treason, felony, forgery, or perjury; but persons having suffered the punishment of any felony not capital, or of any misdemeanor (perjury excepted), are afterwards competent to give evidence.

It is a principle of law that no man shall be examined to prove his own infamy; but a witness may be examined with regard to his own infamy, where it does not subject him to *future* punishment: as a witness may be asked if he has not been imprisoned for perjury. And by the 46 G. 3, c. 37, it is declared that a witness shall not refuse to answer a question relevant to the matter in issue, on the ground that it may tend to establish a debt, or subject him to a civil suit. But it is clear a man is not bound to answer any question, either in a court of law or equity, which may tend to criminate himself, or which may render him liable to a future penalty.

As to *self-crimination*, the 17 & 18 V. c. 125, s. 25, enacts, that a witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and, upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction by certificate of the indictment and conviction of the offence.

No counsel, attorney, or other person, entrusted with the secrets of the cause by the party, shall be compelled to give evidence of such conversation, or matter of privacy, as came to his knowledge by virtue of such trust and confidence; but he may be examined as to mere matter of fact, as the execution of a deed or the like; which may have come to his knowledge without being entrusted in the cause.

One credible witness is sufficient evidence to a jury of any single fact; though the concurrence of two or more corroborate the proof. But the law considers that there are many transac-



tions to which only one person is privy, and, therefore, requires the testimony of no more.

But in cases of high treason, and some other offences against the crown, *two lawful witnesses* are required to convict a prisoner, unless he shall willingly confess the same in open court.

In criminal prosecutions, the injured parties, or prosecutors, are witnesses, because the prosecution is at the suit of the crown in defence of its subjects.

A witness is not permitted to read his evidence, but he may refer to memoranda made by himself at the time the fact occurred, to refresh his memory.

To endeavour to dissuade a witness from giving evidence is punishable by fine and imprisonment.

By 7 G. 4, c. 64, all persons appearing upon recognizance or subpoena, to give evidence in prosecutions for felony, either before the examining magistrate, the grand jury, or on the trial, are entitled to their expenses and a compensation for loss of time; and this although no bill of indictment be preferred. The same provision extends to cases of misdemeanor, with the exception, that no allowance is made for attending the examining magistrate.

When subpoenaed, witnesses must appear at the trial, on the pain of forfeiting £100 to the queen, and £10 to the party aggrieved, with damages equivalent to the loss sustained by their absence from court; but no witness is bound to attend except his expenses are first tendered to him, unless he reside within the bills of mortality, and is summoned to give evidence within the same.

The oath administered to the witness is, not only that what he shall depose is true, but that he shall also depose the *whole* truth; so that he is not to conceal any part of what he knows, whether interrogated particularly on that point or not.

A Mahometan may be sworn on the Alcoran, and a Gentoo according to the custom of India; but a person who denies, or has no notion of a God or future state of reward and punishment is not deemed competent to be a witness. Quakers, Moravians, and Separatists are allowed to make an affirmation on all occasions where an oath by law is now required, subject to the penalties of perjury on affirming falsely.

But by 17 & 18 V. c. 125, *any person* called as a witness on a trial, or required to make an affidavit or deposition, who is unwilling, from alleged conscientious motives on religious grounds, to be sworn, the judge or presiding officer, on being satisfied of the sincerity of such objection, may accept the affirmation of the objecting party.

If a witness remain in court after an order for the witnesses on both sides to withdraw, it is a question for the discretion of

the judge whether he shall be subsequently examined, 6 *Bing.* 683. In the Exchequer, a witness thus remaining is peremptorily excluded. -

All evidence is to be given in open court, in the presence of the parties, their attorneys, the counsel, the spectators, and before the judge and jury; each party being at liberty to except to its admissibility, which exceptions are publicly stated and openly allowed or not by the judge.

An important statute, 17 & 18 V. c. 34, enables the courts of law in England, Ireland, and Scotland to issue process to compel the attendance of witnesses *out of their jurisdiction*, and to give effect to the service of such process in any part of the United Kingdom. By s. 1, if, in any action or suit pending in any of the superior courts of common law in the United Kingdom, it appear to the court, or, if the court is not sitting, to any judge of the court, that it is proper to compel the personal attendance of a witness, a writ in special form may be issued. Statement to be made at the foot of the writ that it is issued by special order of the court or judge. Witnesses not appearing to be punished by the court of the country in which the process has been served in the same manner as in disobedience to a writ of subpoena. But witnesses not liable to punishment, if it appear sufficient money has not been tendered to pay expenses, ss. 2-4.

EVIDENCE BEFORE FOREIGN TRIBUNALS.—By 19 & 20 V. c. 113, facilities are provided for taking evidence in her majesty's dominions in relation to civil and commercial matters pending before foreign tribunals. By s. 1 & 6, when upon application to a superior court or judge of Westminster, Edinburgh, or Dublin, or any superior court in her majesty's colonies or possessions abroad, it appears that a tribunal of competent jurisdiction in a foreign country, before which a civil or commercial matter is pending, is desirous of obtaining the testimony of a witness within the jurisdiction of the courts mentioned of the United Kingdom, the court or judge may order an examination upon oath, upon interrogatories or otherwise, before any person named in such order, of a witness, and the order may direct the attendance of witness and the production of any document or writing bearing on the matter in issue abroad. Certificate of foreign ambassador or diplomatic agent sufficient evidence in support of the application. Examinations to be taken upon oath, and giving false evidence perjury. Witnesses entitled to payment of expenses and loss of time as at a trial, ss. 2-4. A like protection to witnesses, as in trials, against self-crimination by evidence or production of writings, s. 5. Lord chancellor, assisted by two judges of the common law courts, to frame rules regulating proceedings under this act.

## PART III.

## LAWS AFFECTING CLASSES.

SOCIETY is divided into classes, as clergy and laity, civil, military, and naval, public and parochial officers, masters and workmen, with a variety of smaller divisions, each of which is subject to particular laws and regulations, separate from the rest of the community. The various laws by which these subdivisions of society are exclusively affected, will form the subject of this Third Part.

## CHAPTER I.

*The Clergy.*

THE clergy is a term used in contradistinction to the laity, and comprehends all persons in holy orders and ecclesiastical offices. As spiritual persons are not expected to be entangled in temporal affairs, the clergy enjoy peculiar privileges; they cannot be compelled to serve in war, on a jury, nor to appear at a court-leet or view of frankpledge: neither can they be chosen to any secular office, as sheriff, bailiff, constable, or the like. They are incapable of sitting in the house of commons; and during divine service, and in going and returning therefrom, they are privileged from arrests in civil suits. In going and returning from parochial duty they are exempt from turnpike tolls.

The 1 & 2 W. 4, c. 45, empowers bishops, deans, and other ecclesiastical persons, to augment the incomes of *poor vicarages* and *curacies*, by reservations out of rectories impropriate, and tithes belonging to them. Ecclesiastical corporations, colleges, &c., holding impropriate rectories or tithes, may annex the same to any church or chapel within the parish in which the rectory lies, or the tithes arise: but such augmentations not to be granted to any benefice exceeding £300 in yearly value, or so as to raise any benefice to a greater amount than £350 or £300 exclusive of surplice fees. Power is also given, with consent of ordinary and patron, to rectors and vicars to charge their benefices for the benefit of any chapel of ease, or district church or chapel.

By 6 W. 4, c. 20, no ecclesiastical person, or master or guardian of any hospital, to grant a renewal of any lease for two or more lives, until one of the lives shall have dropped, and then only for the lives of the survivors and additional life, not exceeding three in the whole. In leases for forty years, no renewal

to be granted until fourteen years of such leases have expired ; leases for thirty years, ten must have expired ; leases for twenty-one, seven ; and in leases for years no renewal for life or lives. Certain leases may be granted conformable to usual practice. Not to prevent ecclesiastical persons effecting changes under certain conditions ; nor grants under acts of parliament ; nor for same term as preceding leases.

By 5 & 6 V. c. 27, incumbents are empowered, with consent of bishop and patron, to lease lands belonging to their benefices for fourteen years, with a saving of covenants respecting cultivation and improvement. In certain cases leases may be granted for twenty years.

By 5 & 6 V. c. 108, ecclesiastical corporations, both aggregate and sole, with some exceptions, may grant leases for long terms of years.

By 1 & 2 V. c. 106, no spiritual person shall farm above eighty acres, without consent of the bishop, and then not beyond seven years, under a penalty of 40s. per acre. Neither can he engage in trade to buy and sell for profit or gain, but this does not extend to keeping schools or teaching ; nor in respect of buying or selling, in course of such employment ; or to selling anything really bought for the use of the family ; or to being manager of any benefit, life, or insurance society ; or to dealing in cattle for the use of his own lands. Illegal trading subjects to suspension, and for a third offence to deprivation.

Though a clergyman is liable to penalties for trading, his contracts are valid, and he is subject to the bankrupt laws. He may be a member of a banking co-partnership, but cannot, if beneficed or doing ecclesiastical duty, be a director, 4 V. c. 14.

It has been held that *any person* may prosecute a clergyman for neglect of clerical duty, but the Church Discipline Act, 3 & 4 V. c. 86, provides that in any case of a clerk in holy orders being charged with an offence against the ecclesiastical laws, or against whom there may exist scandal or evil report, the bishop of the diocese may, on the application of any party, or if he think fit on his own mere motion, issue a commission consisting of five persons, of whom one shall be his vicar-general, an archdeacon, or rural dean, to inquire into the grounds of such charge or report. Fourteen days' notice previous to the issue of the commission must be given to the clergyman accused, and the charge against him stated.

Clergymen are in general liable to all public charges imposed by parliament, unless specially exempted ; as in certain cases from the duty on horses. They are liable to the poor rate for their tithe and glebe ; and if not compellable to take parish apprentices, they are chargeable towards putting them out.

The clergy are divided into various ranks and degrees ; as

archbishops, bishops, deans, canons, and probendaries; archdeacons, rectors, vicars, curates, and parish clerks when in orders.

An *archbishop* is the chief of the clergy in a whole province, and has the inspection of the bishops of that province, as well as the inferior clergy, and may deprive them on proper cause.

The Archbishop of Canterbury is styled the metropolitan and primate of all England, and enjoys by custom the privilege to crown the kings and queens of the realm. He has also the power to grant dispensations in any case; to grant special licences to marry at any time or place; and to exercise the right of conferring all the degrees which are taken in the universities; but in this case the graduates of the universities, by various acts of parliament and other regulations, are entitled to many privileges not extended to a degree of the primate or a *Lambeth degree*.

A *bishop* has power and authority, besides his sacred functions, to inspect the manners of the people and clergy, and to reform them by ecclesiastical censure; for which purpose he has courts under him, which are holden by his chancellor. It is also the business of the bishop to ordain, admit, and institute priests; to grant licences for marriage, consecrate churches, and confirm, suspend, or excommunicate. Archbishops and bishops are nominally elected by the dean and chapter, but virtually appointed by a *congé d'elire* of the crown.

A bishop may resign his see, and stipulate for the acceptance of a pension and palace on retirement during his lifetime. So under 19 & 20 V.<sup>c.</sup> 115, when the archbishops of Canterbury and York signified to the crown that they had canonically accepted the resignations of the bishops of London and Durham, their sees were declared vacant, the retiring bishops receiving pensions, commencing from the day of their resignation.

A *dean* and *chapter* are the council of the bishop, to assist him with their advice in affairs of religion. The chapters, consisting of canons or prebendaries, are sometimes appointed by the sovereign, sometimes by the bishop, and sometimes elected by each other. Deaneries and prebends may become void, like a bishopric, by death, deprivation, or resignation.

An *archdeacon* has an ecclesiastical jurisdiction, subordinate to the bishop, through the whole of his diocese, or some part of it. All archdeacons have equal jurisdiction.

The most numerous class of ecclesiastical persons are *parsons* and *vicars* of churches. A *parson* is one that has full possession of all the rights of a parochial church: he is sometimes called rector or governor of the church. During his life, he has in himself the freehold of the parsonage, the glebe, the tithes, and other dues.

The distinction between a *parson* and a *vicar* is this: the parson has usually the sole right to all the ecclesiastical dues in

his parish; but the vicar has generally an appropriator over him, entitled to the best part of the profits, to whom he is, in effect, perpetual curate, with a fixed stipend. A vicar is a name that was unknown till the reign of Henry III., before which, the rector provided a curate, and maintained him on an arbitrary stipend.

The method of becoming a parson or a vicar is much the same; holy orders, presentation, institution, and induction, are necessary to both. No person is eligible to any benefice unless he has first been ordained a priest, and then he is called a clerk in orders. No person can be admitted a deacon in England or Ireland till he has attained the age of twenty-three complete, nor be admitted a priest before the complete age of twenty-four. While a man is only a deacon he can quit his profession for any other; but, when once ordained a priest, he cannot secede from holy orders, 1 *Rob.* 382. None can administer the sacraments but a priest; nor can a deacon preach without first being heard by the bishop.

Before admission to a benefice, a declaration of conformity to the liturgy must be made; and the party must also subscribe before the ordinary, and publicly read in the church of the benefice the thirty-nine Articles, with a declaration of his assent thereto, in two months after the possession of the benefice, otherwise he may be deprived, 13 *Eliz.* & 23 *G.* 2, c. 28.

The bishop may refuse institution to a clerk, on the ground of heresy, gross immorality, or insufficiency in point of learning.

*Induction* is performed by mandate from the bishop, and consists in giving the clerk corporal possession of the church; as by holding the ring of the door, or tolling a bell, which is meant to give the parishoners notice to whom the tithes and dues are to be paid.

*Curates* are the lowest degree in the church, being in the same state that a vicar was formerly, an officiating temporary minister, instead of an incumbent entitled to the tithes of the parish. By 1 & 2 *V. c.* 106, s. 85, where an incumbent does not duly reside, the bishop is empowered to grant a certain fixed salary to the curate, out of the proceeds of the benefice; such salary shall in no case be less than £80 per annum, or the annual value of the benefice, if the gross value does not amount to £80, and not less than £100 per annum, or the whole value, if the value shall not exceed £100, in any parish where the population shall amount to or exceed 300 persons, and so on in proportion.

## II. PLURALITIES, RESIDENCE, AND DIGNITIES.

In respect of plurality and residence, the 1 & 2 *V. c.* 106, provided that not more than two preferments should be accepted, nor the holder of one benefice accept another, unless within *ten miles* of each other; nor if the population of one such benefice is more than 3000, or their joint yearly value exceed £1000.

But if the yearly value of one benefice be less than £150, and the population does not exceed 2000, they may be held jointly, after statement of reasons by the bishop, who may require residence on the larger parish for nine months in the year. A leave or dispensation to hold two benefices must be obtained from the Archbishop of Canterbury, after the bishop has certified. Each incumbent, not having a licence or certificate, unless he be resident on another benefice, when such absence shall exceed three months but not six months, to forfeit one-third part of the annual value of the benefice from which he absents himself; if such absence exceed six but not eight months, one-half part of such annual value to be forfeited; exceeding eight months, two-third parts, or, if absent a whole year, three-fourth parts of the annual value forfeited.

The provisions of this act are amended by 13 & 14 V. c. 98, enacting that no spiritual person shall hold together any two benefices, except in the case of two benefices the churches of which are within *three miles* of one another by the nearest road, and the annual value of one of which does not exceed £100. By s. 2, notwithstanding any provision in 1 & 2 V., it is lawful to hold two benefices according to the provision just mentioned of 13 & 14 V., whatever may be the yearly value of such two benefices jointly, but not to extend to repeal any provisions of the 1 & 2 V. in respect of the amount of population or licence of dispensation. Term "benefice" explained to mean any benefice with cure of souls. Annual value of benefice to be estimated clear of deductions for taxes, rates, tithes, dues, and permanent charges, but not stipend of curate. Deans of cathedrals hereafter appointed, not to hold with deanery the office of head of any college or hall in either of the Universities of Oxford or Cambridge, or be provost, warden, or master of any public school. Nor are the heads of colleges, &c., to accept any cathedral preferment or benefice, except such form part of the permanent endowment of the office. Acceptation of any benefice contrary to the act renders void any previous presentation. Provisions by s. 8 for the union of benefices in certain cases. Act not to affect preferments to which persons have been already admitted. Persons already holding one benefice may hold an additional one, if appointed for next presentation previously to Dec. 23, 1837. Provision is also made for holding benefices with honorary canonries under 4 & 5 V. c. 39.

A spiritual person is not allowed to serve more than two benefices in one day.

Where there is no parsonage-house, or it is in such a state as to be incapable of being repaired, so as to be fit for the residence of an incumbent, any house within three miles of the church, or two miles, if in a town, may be licensed, and considered the legal residence.

By 2 & 3 V. c. 30, in benefices where there are more than

one spiritual person entitled to the cure of souls, the bishop may order an apportionment of the duties, if no cause is shown by the churchwardens and inhabitants to the contrary.

In various districts are *lecturers* or *preachers* in the holy orders of deacon or priest, elected or otherwise appointed to preach lectures or sermons only, without the performance of other clerical duty; these, by the 7 & 8 V. c. 59, may be licensed by the bishop, with the consent of the incumbent, to perform the duties of assistant curate; such appointments do not except incumbents from providing curates in cases where they are now liable. *Parish clerks*, in holy orders, may in like manner be licensed to do the duty of an assistant curate.

### III. EPISCOPAL AND CAPITULAR ESTATES.

For the improvement of episcopal and capitular estates in England, without prejudice to the interests of persons holding leases, facilities are given, under 14 & 15 V. c. 104 (continued by 19 & 20 V. c. 74), for certain dealings between ecclesiastical corporations and their lessees.

By s. 1, any ecclesiastical corporation, with the approval in writing of the Church Estates Commissioners, may sell to any lessee under any lease granted by such corporation the reversion, estate, and interest of such corporation in all or any of the lands comprised in such lease, for such consideration, and in such manner, as such corporation and lessee may, with such approval, think fit; and it shall be lawful for such ecclesiastical corporation, with such approval, to enfranchise any copyhold held of any manor belonging to such corporation, or to exchange with any lessee under any lease granted by such corporation all or any of the lands therein comprised, or the reversion, estate, and interest therein of such corporation, for any other lands, whether of freehold or copyhold, or for the estate and interest of such lessee in any other lands belonging to such corporation, and upon any such exchange either to receive or pay any money by way of equality of exchange; and it shall also be lawful for such corporation, with such approval, to purchase the estate and interest of any such lessee in any lands belonging to such corporation, or of any holder of copyhold land of any such manor: provided that where the estate or interest of any ecclesiastical corporation in any tithes or tithe rentcharges, or any hereditaments allotted or assigned in lieu of tithes, is proposed to be sold or given in exchange by such ecclesiastical corporation under the powers of this act, the Church Estates Commissioners, before they approve such sale or exchange, shall bring the circumstances of the places in which such tithes arise under the notice of the Ecclesiastical Commissioners for England, and where the Ecclesiastical Commissioners shall so direct, the Church Estates Commissioners shall, as a condition



of their approval of such sale or exchange, require such provision to be made in respect of the spiritual wants of such place out of the monies to arise or the property to be taken under such sale or exchange as the Ecclesiastical Commissioners shall think fit.

By s. 2, upon the surrender to an ecclesiastical corporation of the interest of a lessee *in a part only* of the lands comprised in a lease, the Church Estate Commissioners, by a memorandum in writing, which may be endorsed on such lease, may apportion the rent reserved, and which part shall continue payable, and such apportioned part of the rent shall be payable as if the sum had been the rent originally reserved in respect of the lands not surrendered. The interests acquired by lessees under the act to be subject to the equities, and bound by the covenants of renewals to which their leases may be subject. Leaseholders' interests not to be purchased without consent of sub-lessees, who have covenants of renewal. Confirmation of conveyances by Church Estates Commissioners to be a valid assurance, and no purchaser deriving title under such assurance to be concerned to inquire into the propriety or sufficiency of the consideration.

By 16 & 17 V. c. 35, a person preferred to a dignity in a cathedral or collegiate church between March, 1853, and January, 1855, is not entitled to compensation on its abolition.

#### IV. CREATION OF NEW PARISHES.

The 6 & 7 V. c. 37, and the 7 & 8 V. c. 94, afford facilities for the subdivision of populous districts and for the formation thereof of separate and distinct parishes for all ecclesiastical purposes, and also for the endowment and augmentation of poor livings. By these acts the Ecclesiastical Commissioners are empowered to borrow £600,000 of the governors of Queen Anne's Bounty, on the security of the property accruing under the Cathedral Acts (3 & 4 V. c. 113, and 4 & 5 V. c. 39), to form districts for spiritual purposes in such populous parishes as are requisite, with the consent of the bishop of the diocese, to be permanently endowed to the amount of not less than £100 per annum, or to be increased to £150 upon the district becoming a new parish. The scheme for the formation of such district is to be submitted to H. M. in council, giving previous notice of the same to the patron and incumbent of the parish; and a minister is then to be nominated, to be licensed by the bishop, who is to hold his office in the same manner as a perpetual curate, and may in such character receive any grant or endowment, notwithstanding the statutes of mortmain. A temporary place of worship may be licensed by the bishop, but this is not to prevent marriages or burials for the district in the mother church, nor to affect certain other rights. Upon a new church being consecrated, the district is to become a new parish, the

minister to be a perpetual curate, and churchwardens are to be chosen and appointed; but this act is not to affect parochial rights or privileges otherwise than as expressly provided, and compensation may be awarded to the incumbent of any parish whose emoluments may be diminished by the operation of this act. The patronage of such new districts may be conferred, either in perpetuity or for one or more nominations, on any person contributing to the permanent endowment of the minister, or towards providing a church or chapel for the use of the inhabitants, unless so assigned; the patronage is to be exercised alternately by the Crown and by the bishop of the diocese.

By 19 & 20 V. c. 104, a district containing a church may become a new parish on being constituted a separate district by order in council. By s. 5, a right to a pew in the old parish church is not to be retained after the occupation of sittings in the church of the new parish. Pew rents may be taken according to a scale, and applied towards the repair of the church, and to providing an endowment. Upon the permanent endowment of any church or chapel, a proportionate number of sittings to be declared free or pew rents to be reduced, s. 7. The 19 & 20 V. c. 50, enables parishioners, in certain parishes, and others, forming a numerous class, to sell advowsons held by or in trust for them, and to apply the proceeds in providing parsonage houses, augmenting small livings, and to other beneficial purposes.

IRISH CHURCH.—By 14 & 15 V. c. 71, upwards of forty statutes from 2 Car. c. 2, to 12 & 13 V. c. 99, relating to the Irish branch of the United Church, are repealed in order to their consolidation and amendment. The acts repealed mostly pertain to the building of ecclesiastical residences, the endowment, purchase, or exchange of glebe land, to proprietary chapels, and the disappropriation of appropriate and impropriate parishes.

## CHAPTER II.

### *Nobles and Commoners.*

ALL degrees of nobility are derived from the queen, and she may institute what new title she pleases. Hence it is that all degrees of nobility are not of equal antiquity. Those now in use in the United Kingdom are dukes, marquises, earls, viscounts, and barons, who constitute the peerage of the realm.

It is only the head of the family who has a proper title, though the junior members are usually considered noble. Those who are peers of England, or of the United Kingdom, have a seat in the house of lords, which is transmitted by hereditary descent. Peers of Ireland and Scotland, who are not peers of

England, can only sit in the lords by election. It follows that there are two classes of nobles in the empire, those who inherit political power with their peerage titles, and those who do not, but are on the footing of commoners, like the younger branches of noble families, that have titles by courtesy.

The right of peerage seems to have been originally territorial, that is, annexed to lands, honours, castles, and manors, the proprietors and possessors of which were allowed to be peers of the realm, and were summoned to parliament to do suit and service to the sovereign: when the land was alienated, the dignity passed with it as appendant; but when alienations grew frequent, the peerage was confined to the lineage of the party ennobled, and, instead of territorial, became personal.

A peer cannot lose his nobility except by death or attainder; though there is an instance in the reign of Edward IV., of the degradation of George Neville, Duke of Bedford, by act of parliament, on account of his poverty, which rendered him unable to support his dignity. It has been said, too, that if a baron waste his estate, so that he be not able to support his degree, the sovereign may degrade him; but it is now expressly held that a peer can be degraded only by act of parliament.

In treason, felony, and misprision of these offences, a nobleman must be tried by his peers; but in misdemeanors, as riots, libel, conspiracy, and perjury, a peer is tried like a commoner, by a jury.

*Commoners* consist of all those who are not peers, and, like the nobility, are graduated in ranks and degrees, as baronets and knights. Esquires and gentlemen, according to Sir Edward Coke, are mere titles of *worship*, not of *dignity*, and before whom the heralds rank all colonels, serjeants-at-law, and doctors in the three learned professions.

The rules of precedence in England may be reduced to the following table, which is founded on various statutes, grants by letters-patent, and established custom:—

Queen's children and grand-children	Lord Privy Seal	} Above all peers of their own degree.
Queen's brothers	Lord Great Chamberlain	
Queen's uncles	Lord High Constable	
Queen's nephews	Lord Marshal	
Queen's nephews	Lord Admiral	
Archbishop of Canterbury	Lord Steward of the household	
Lord Chancellor	Lord Chamberlain of the household	
Archbishop of York		
Lord Treasurer		
Lord President of the Council	Dukes	
	Marquises	

Dukes' eldest sons	Master of the Rolls
Earls	Chief Justice of the Common Pleas
Marquises' eldest sons	Chief Baron of the Exchequer
Dukes' younger sons	Vice-Chancellors
Viscounts	Judges and Barons of the coif
Earls' eldest sons	Knights Bannerets, royal
Marquises' younger sons	Viscounts' younger sons
Secretary of State, if a Bishop	Barons' younger sons
Bishop of London	Baronets
Bishop of Durham	Knights Bannerets
Bishop of Winchester	Knights of the Bath
Bishops	Knights Bachelors
Secretary of State, if a Baron	Baronets' eldest sons
Barons	Knights' eldest sons
Speaker of the House of Commons	Baronets' younger sons
Lords Commissioners of the Great Seal	Knights' younger sons
Viscounts' eldest sons	Colonels
Earls' younger sons	Serjeants-at-law
Barons' eldest sons	Doctors
Knights of the Garter	Barristers-at-law
Privy Councillors	Esquires
Chancellor of the Exchequer	Gentlemen
Chancellor of the Duchy of Lancaster	Yeomen
Chief Justice of the Queen's Bench	Tradesmen
	Artificers
	Labourers

*Married* women and widows are entitled to the same rank among each other as their husbands would respectively have borne among themselves, except such rank is merely professional or official; and *unmarried* women to the same rank as their eldest brothers would bear during the lives of their fathers.

With respect to the rank of *esquire*, the distinction is somewhat unsettled; for it is not an estate, however large, that confers this degree. Camden, who was himself a herald, reckons up four sorts of esquires. 1. The eldest sons of knights, and their eldest sons in perpetual succession. 2. The eldest sons of peers, and their eldest sons in perpetual succession. 3. Esquires created by the queen's letters-patent, or other investiture (long since disused), and their eldest sons. 4. Esquires by virtue of their office, as justices of the peace, and others who bear any office or trust under the crown, and are styled esquires by the queen in their commission and appointment. Lastly, barristers are also esquires; and the Court of Common Pleas refused to hear an affidavit read, because a barrister named in it was not

called an esquire, 1 *Wills*, 244. The title is also now commonly applied to literary characters, the higher class of merchants, bankers, and persons living independently of trade or other pursuits for a maintenance.

The term *gentleman* is considered an inferior designation to that of esquire, but what is the generic difference between the two, writers are not agreed. A *yeoman* is he that has a freehold of forty shillings a year, who is qualified to vote for knights of the shire, and do any other act of a freeman.

The rest of the commonalty are *tradesmen*, *artificers*, and *labourers*, who must, by 1 H. 5, c. 5, be styled by the name and addition of their trade or occupation in all actions and other legal proceedings.

## CHAPTER III.

### *Public Officers.*

#### I. SHERIFFS.

THE sheriff is an officer of great antiquity, and was formerly chosen by the people, but is now appointed by the crown: he holds his office only for one year, and is not compellable to serve again for two years after.

In his *judicial* capacity he executes writs of trial for debts under £20, and administers justice in the county court: he judges of the qualifications of voters for members of parliament, determines the election of knights of the shire, of coroners, and verderers.

He is *keeper of the queen's peace*, and may commit to prison any who attempt to break it. He may, and is bound, *ex officio*, to take all traitors and felons, and commit them to gaol for safe custody. He is also to defend his country against the queen's enemies, and, for this purpose, as well as for keeping the peace and pursuing felons, may command every person, above fifteen years of age, and under the degree of a peer, to attend him, on pain of fine and imprisonment. But he cannot try any criminal offence, nor can he, during his office, act as justice of the peace.

In his *ministerial capacity* he is bound to execute all processes issuing from the courts of justice: he, or his deputies, must serve the writ, arrest, take bail, summon and return the jury, and see the judgment of the court carried into execution.

As *queen's bailiff*, he preserves the rights of the crown within his bailiwick; he must seize, to the queen's use, all lands devolved to the crown, by attainder or escheat; levy all fines and forfeitures, seize and keep all waifs, estrays, wrecks, and the like, unless granted to some private person; and, if commanded

by process from the exchequer, must also collect the queen's rents in his county.

For the execution of these various duties, he has usually under him an under-sheriff, bailiffs, and gaolers. The under-sheriff generally performs the chief functions of the office. A sheriff's officer is not allowed to be bail in a civil action, nor to be attorney in the queen's courts during the time he is in office; but these statutory regulations are evaded by practising in the names of other attorneys, and putting in other nominal under-sheriffs.

By 1 V. c. 55, the sheriff only takes such fees as are allowed by the taxing officer of the courts of law at Westminster. During his office he is the first man in the county, and superior to every nobleman: he sits, or is entitled to sit, on the bench with the justices of assize.

By charter, the sheriffs of London and Middlesex are chosen by the city; no one is excused from paying the fine of £600 for not serving, unless he swear he is not worth £15,000.

## II. CORONER.

This officer is chosen for life, by the freeholders, but is removable for incapacity, extortion, neglect, or misbehaviour. The number of coroners is not fixed; in some counties there are six, in some four, and some have fewer. Their districts and the time and manner of electing them are regulated by the 7 & 8 V. c. 92, on the model of the election of knights of the shire: but the statute does not extend to coroners appointed within certain precincts by the crown; nor to coroners by municipal or other charter, commission, or privilege.

The office of coroner is to inquire into the cause by which any person came to a violent or unnatural death, and this must be done upon *view of the body*; for, if the body be not found, he cannot inquire, unless he have a special commission for the purpose. The coroner must also sit, if convenient, at the place where the death happened. If any be found guilty of murder or homicide, he is to commit them to prison for trial, and to inquire concerning their land and goods, whether any deadand has accrued to the queen, and certify the whole to the court of queen's bench, or the next assize.\* In illness he may appoint a deputy to act for him, and his inquisition cannot be quashed for mere technical errors.

By 25 G. 2, c. 29, the coroner is allowed 20s. for every inquisition (except in a gaol), and 9d. per mile for travelling, from his usual abode, to take the inquisition; to be paid out of the county rate.

By 7 G. 2, c. 64, *all* coroners in inquisitions for manslaughter or murder, are required, under penalty, to take the evidence in

writing, and are empowered to bind witnesses, by recognizance, to appear at the trial.

By 6 & 7 W. 4, c. 89, the coroner may summon medical practitioners to give evidence on inquests, and direct the performance of a post-mortem examination; and a majority of the jury may require the coroner to summon additional medical evidence, if the first be unsatisfactory. Fee of one guinea, payable out of the poor rates, to be paid to medical witness, and two guineas if a post-mortem examination be performed. Penalty on medical practitioner neglecting to attend, £5. No fee payable on inquest held in any public infirmary or institution.

By 1 V. c. 68, medical witnesses are to be paid at once by the coroner, in lieu of being referred to the churchwardens for payment. By the same act it is provided, that in respect of *other* expenses than to medical witnesses, the justices in general or quarter sessions, or the town council in boroughs having a coroner, shall prepare a schedule of fees, allowances, and disbursements to be paid by the coroner, which schedule may be varied from time to time, a copy of the schedule to be deposited with the clerk of the peace, and another with the coroner: the expenses of the inquest to be paid immediately on the conclusion of the proceedings. Coroner's accounts to be submitted to the sessions or the town council, and settled out of the county rates, or the borough fund, with 6s. 8d. extra for every inquest. The 9 & 10 V. c. 37, regulates the office of coroner and the expense of inquests in Ireland.

A coroner's court is a *close court*, for the purposes of the inquisition, and, acting judicially, he may exclude any one from the court who is there merely as a spectator or reporter, not for the purpose of giving evidence or information, 6 *Barn & C.* 611.

A coroner has a discretion as to admitting or excluding any person from his court; and it seems a newspaper statement of an inquisition, accompanied with comments, is libellous, although the report be strictly true. He may disinter a dead body in order to view it, but if it is in such a state that it cannot be seen, the inquest may be taken by the jurors upon testimony. It is an indictable offence to bury a body liable to an inquest without sending for the coroner.

Coroners may inquire as to found or hidden treasure; they are to execute writs where the sheriff is either plaintiff or defendant, and to return juries where the sheriff is in any way interested or is related to either party.

### III. JUSTICES OF THE PEACE.

Justices of the peace are of three sorts. First, by act of parliament, as the Bishop of Ely, the Archbishop of York, and Bishop of Durham, by 27 H. 8, c. 14. Secondly, by charter or

grant made by the queen, under the great seal; as the mayor and chief officers in corporate towns. Thirdly, by commission, at the instance of the lord chancellor. Justices cannot act, though appointed, until they have taken out a writ of *dedimus* from the clerk of the crown, empowering certain persons therein named to administer the usual oaths to them. Some of the more eminent are of the *quorum*; that is, certain business cannot be transacted without their presence.

The powers and duties of justices depend on their commission, and on the several statutes which have created objects of their jurisdiction. They are commissioned to preserve the peace, to suppress riots and affrays, to commit felons and inferior criminals; and two or more of them may inquire into and determine felonies and other misdemeanors. Their duties have greatly increased by late acts of parliament, especially in sessional business, in regulating gaols and houses of correction, in taking cognizance of various offences against the vagrant, game, and revenue laws, and in the licensing of public-houses.

By 18 G. 2, c. 20, every justice must have an estate of £100 per annum, clear of incumbrance, or the immediate reversion of reserved rents to the amount of £300; and if he act without such qualification, he forfeits £100. But this does not extend to corporation justices, peers, privy-councillors, judges, under-secretaries of state; nor to the heads of colleges in the two universities, or mayors of Oxford and Cambridge.

No practising attorney, solicitor, or proctor, is qualified to act as justice for any county. Misconduct, non-residence in the county, or ceasing to be possessed of the requisite qualification, is cause for dismissing a justice.

A justice of the peace acts *ministerially* or *judicially*. *Ministerially*, in preserving the peace, hearing charges against offenders, issuing summonses or warrants thereon, examining the informant and his witnesses, binding over the parties to prosecute and give evidence, bailing the supposed offender, or committing him for trial. *Judicially*, as when he convicts for an offence. His conviction, drawn up in due form, and unappealed against, is conclusive, and cannot be disputed by action; though if he act illegally, maliciously, or corruptly, he is punishable by information or indictment. When a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found, on investigation, not strictly right, but whether it proceeded from an unjust, oppressive, or corrupt motive (among which *fear* and *favour* are generally included), or from mistake or error only. In the latter case, the court will not grant the rule, *Rex v. Borron*, 3 B. & A. 432. An information will be granted against a justice as well for granting as for refusing an ale licence improperly, 1 T. R. 692.



Justices are empowered, in various cases, to issue warrants of distress for the recovery of penalties on convictions before them. And, by the 5 G. 4, c. 18, where it appears that sufficient distress cannot be had, the justices may, without issuing such warrant of distress, commit the offender to prison.

By 1 & 2 G. 4, c. 63, justices of counties, ridings, or divisions, may act within any city, town, or other precinct having exclusive jurisdiction, but not being counties themselves within their district. The 7 & 8 G. 4, c. 64, empowers two justices to take bail in cases of felony, where there is not a strong presumption of guilt against the party brought before them. It also requires them to take the most material part of the evidence on examination before them, *in writing*, to be returned to the assizes, both in charges of felony and misdemeanor.

Doubts having arisen as to the co-equal jurisdiction of city and borough justices and county justices under 43 Eliz. c. 2, in certain matters relating to the poor, they are removed by 12 & 13 V. c. 64, enacting, that all power which may be exercised out of general or quarter sessions by two or more county justices, may be exercised by two or more city or borough justices having jurisdiction therein.

There are many statutes made to protect justices in the discharge of their duties : such as prohibit them from being sued for any oversight without prior notice, and to stop all suits begun on tender made of sufficient amends. But, on the other hand, any malicious or tyrannical abuse of their office is severely punished : and persons recovering a verdict against a justice for any wilful and malicious injury are entitled to double costs.

#### IV. POLICE JUSTICES OF THE METROPOLIS.

Police justices are stipendiary magistrates, which, exclusive of those at Bow Street Office, were first created by act of parliament in 1792. They are limited to twenty-seven in number by 2 & 3 V. c. 47, must be barristers, and are appointed by, and under the control, of the secretary of state for the home department. Their duties are judicial, and consist in the examination and discharge or commitment of offenders brought before them by the constables under the control of the police commissioners. One magistrate is required to attend at each of the police courts every day except Sunday, Christmas-day, Good Friday, or any public fast or thanksgiving-day, from ten in the morning until five in the afternoon, and at such other times as may be directed by a secretary of state.

Two police commissioners for the metropolis and vicinity were instituted under 10 G. 4, c. 44, and are empowered to act as justices in the counties of Middlesex, Surrey, Herts, Essex, Bucks, and Berks ; but they are not to act in any court of general or quarter sessions, nor in any matter out of sessions,

except for the preservation of the peace, and the detection and committal of offenders. They are exempt from any qualification *by estate*, and have the entire control of the nightly watch and police within the limits of the metropolitan police district, and which district may be extended to any parish or place within the limits of the central criminal court, not distant more than fifteen miles in a right line from Charing Cross.

By 19 & 20 V. c. 2, in lieu of two, there is to be only one commissioner of police, to be styled "the commissioner of police of the metropolis," and two assistant commissioners are to be appointed, having the qualifications and powers prescribed by 10 G. 4. Salary of the sole commissioner not to exceed £1500, that of each assistant commissioner not to exceed £800. In case of vacancy, or the illness of chief commissioner, one assistant commissioner to act.

A commissioner of police was created in 1839, to act for the city of London, which had been excepted from the jurisdiction of the 10 G. 4, c. 44: he is chosen by the common council, subject to the approval of the crown, and may, on the petitioning of the corporation, be a justice of peace within the city.

The following are the chief regulations of the Police Acts, which the commissioners and constables are empowered to enforce, and the inhabitants of the city, and within the limits of the metropolitan districts are required to observe:—

No licensed victualler or other person to open his house for the sale of wine, spirits, beer, or other fermented or distilled liquors, on Sunday, Christmas-day, or Good Friday, before one in the afternoon, except refreshment for travellers; nor is any person licensed to deal in exciseable liquors to supply any sort of distilled exciseable liquors to any child under, or apparently under, sixteen years of age, to be drunk on the premises.

Houses of public resort, as beer-shops, coffee-shops, cook-shops, free vintners, are placed under the same regulations as public-houses, for the prevention of disorderly conduct, or the resort thither of improper characters. Unlicensed theatres, and places for fighting or baiting animals, birds, &c., are prohibited. Reputed common gaming-houses may be forcibly entered by the police, and the keeper and all present in it without lawful excuse, be taken into custody and punished. Pawnbrokers are prohibited from taking pledges, or purchasing articles from children who are apparently under sixteen years of age.

Persons driving cattle or vehicles are required to attend to the orders issued by the commissioners of police, for their regulation during the hours of divine service.

Nuisances in the thoroughfares are prohibited; as showing cattle for sale, feeding or exercising horses, &c., making or repairing any article (except in cases of absolute necessity), letting an unmuzzled ferocious dog go at large, hunting cattle, or

negligently driving them, obstructing passengers by means of a horse, vehicle, &c., rolling a cask, wheel, &c., on the footpath, or carrying showboards or placards upon the same, posting bills, or otherwise defacing a building of any description, or selling or exposing any indecent book.

Any street musician must depart from any particular locality when desired to do so by a householder.

No master of a vessel lying in the Thames, between Westminster and Blackwall, may keep any gun loaded with shot on board; nor fire any gun between sunset and sunrise; nor may he heat, or allow others to heat, any combustible matter on board.

No booth or house or other place of entertainment at any fair may be kept open after eleven o'clock at night, nor be opened before six in the morning.

Any drunken person guilty of riotous or indecent behaviour, either in the street or the station-house, punishable by fine or imprisonment for seven days.

Any person driving or riding in any vehicle without the owner's consent; as behind a coach, for example, is punishable. So is any person creating a nuisance by any noisome smell; throwing out of their houses any filth, refuse, or obstructive materials; shaking or beating carpets, &c., excepting door-mats before eight o'clock in the morning; emptying any cesspool, &c., between six in the morning and twelve at night; exposing things for sale in any park or public garden without consent; or obstructing the footpath or carriageway by any projection or otherwise; or leaving open any vault, cellar, &c.

Any prostitute or other person loitering about at night, to the annoyance of passengers or inhabitants; any person provoking to a breach of the peace, by abusive or threatening words; blowing a horn or other noisy instrument; discharging firearms, throwing stones, making bonfires and slides; or flying kites, or playing at any game to the annoyance of inhabitants or passengers; ringing any door-bell, knocking at any door, or extinguishing any light without lawful excuse: these are all offences liable to fine or imprisonment.

The principal powers conferred upon the police are as follows:—

They are to act on the river Thames, and may at any time board vessels, to observe the conduct of persons on board. They are to enforce any regulations made by the commissioners to prevent obstructions in the streets. They may destroy any dog, or other animal, supposed to be in a rabid state. They may apprehend, without a warrant, any person seen by them to have committed an offence, as well as any disorderly person or persons suspected of having committed, or being about to commit, any felony, misdemeanor, or breach of the peace; as also

any person lying or loitering about and not giving a satisfactory account of him or herself.

They may also apprehend, without a warrant, any person charged with an aggravated assault, or with a misdemeanor or felony, though not committed in their presence.

They may stop and search any vessel, cart, or other vehicle, in which they may suspect there is stolen property, as well as any person suspected of being concerned in illegally conveying away any property.

They may stop and detain, until due inquiry be made, any vehicle employed in removing furniture between the hours of eight in the evening and six in the morning; or whenever they shall have good grounds for believing such removal is made to evade the payment of rent.

They are to take every person apprehended without a warrant to the station-house, where the superintendent is empowered to take bail for appearance before a magistrate.

Resisting the police in the execution of their duty, or inciting any person so to do, subjects to a penalty of £5, or one month's imprisonment, at the discretion of the magistrate.

The number of police courts, exclusive of two in the city, is eleven, with those of Greenwich and Wandsworth. By 3 & 4 V. c. 84, the queen in council may establish new police courts or districts, and a police magistrate may act anywhere within the limits of the metropolitan police district. Appeal may be had from any leet jury, or other court, to a police magistrate, in respect of weights and measures. Duties respecting the balloting of militia to be performed by the constables, who may also, without the presence of two justices, put landlords in possession of premises deserted, or kept by a tenant in arrear of rent.

#### V. CONSTABLES.

These are very ancient conservators of the peace, and are mostly chosen by the court-leet, the parishioners, or magistrates, and sworn in by the justices. They are of three kinds, namely, *high* constable, *petty* constable, and *special* constable.

The office of the *high* constable is not confined to any particular town or parish, but extends to the hundred for which he is appointed. The *petty* constable's jurisdiction generally extends to the parish, borough, or liberty for which he is chosen, and in which he must be resident; but he may execute a warrant anywhere within the jurisdiction of the magistrate who issues or indorses the same. The *special* constable's jurisdiction is much the same as the *petty* constable's, and he is, in fact, only appointed in particular emergencies to assist the former in his duties.

*Exemptions from the office.*—1. Aged persons, incapacitated by weakness; and, in Westminster, those sixty-three years old

are expressly exempted. 2. Aldermen of London. 3. Apothecaries practising in, or within seven miles of London, free of the company; or in the country, having served seven years. 4. Attorneys of the court of queen's bench and common pleas. 5. Practising barristers. 6. Dissenters, being teachers or preachers, but not otherwise. 7. Foreigners naturalized. 8. Serjeants and private men serving in the militia. 9. Prosecutors of felons, and the first assignee of the certificate. 10. Surgeons free of the company. 11. And last, physicians, being president or fellows of the college of London, but no others, nor elsewhere, are exempt.

As the office of constable may be executed by DEPUTY, officers of the guards are not exempt, nor officers in the customs, nor a younger brother of the Trinity House, nor masters of arts, nor women, 2 *Hawk*, c. 10, s. 37. But if a gentleman of quality, or a physician, officer, &c., be chosen constable where there are other sufficient persons beside, and no special custom concerning it, it is said such person may be relieved. The queen may exempt any one from being constable, if there be a sufficient number of persons left to serve the office, 1 *T. R.* 686.

A constable may appoint a deputy to execute his office, when, by reason of sickness, absence, or otherwise, he cannot do it himself. If the deputy be not duly sworn, the principal is liable, otherwise he is not. Dissenters and Roman Catholics may execute the office of constable by deputy.

#### VI. DUTIES OF CONSTABLES.

The general duties of a constable are, to prevent the violation of the laws, to apprehend offenders, to preserve the peace of his district, to attend, on particular occasions, excise officers, and execute the warrants of coroners and justices of the peace. In the lawful discharge of their duties, they may call to their aid the assistance of by-standers, or their neighbours: and such persons are bound to assist them on pain of fine and imprisonment.

If persons are engaged in an affray, or on the point of entering into one, as where one shall threaten to beat another, the constable may apprehend the offender, and carry him before a justice, or he may imprison him on his own authority, till the heat be over, and afterwards detain him till he find sureties for his good behaviour.

If an affray be in a house, the constable may break open the doors to preserve the peace; but he cannot apprehend for an affray, or assault, committed *out of his presence*, without a warrant from a magistrate, unless in case of felony, or he belongs to the metropolitan police force.

A constable may justify an imprisonment without warrant, on a reasonable charge of felony made to him, though he after-

wards discharge the prisoner without taking him before a magistrate, and though it turn out no felony has been committed. But, in general, a constable cannot, without an express charge or warrant, justify the arrest of the supposed offender, upon suspicion of guilt, unless an actual felony has been committed, and there is reasonable cause for suspicion that the party apprehended is guilty.

In executing a warrant, the arrest is to be made by laying hold of, or at least securing, the person of the party; without this it is not a legal arrest.

A constable, being a known and sworn officer within his own district, is not obliged to show his warrant on being demanded; but if he is not sworn, or out of his district, he must produce his warrant. A *warrant of distress*, however, must, if required, be shown to the person whose goods are distrained. He need not return his warrant after execution, but may keep it for his own justification.

No one can justify breaking open a door to make an arrest, without first acquainting the owner with the cause of his coming, and requesting admittance; no particular form of notice is requisite; it is sufficient to say the officer comes under a proper authority, not as a trespasser.

If there be disorderly drinking or noise in a house, at an unseasonable hour of the night (especially at an inn, tavern, ale, or coffee house), the constable may, after demanding admittance, and refusal, break open the door, to see what is doing, and suppress the disorder. But, upon a general warrant, expressing neither treason, felony, nor breach of the peace, an officer cannot break open any door to execute it; nor can he forcibly enter any house to distrain for poor rate or church rate; or to execute process in a *civil suit*; but if he find the outer door open, or it be opened to him, he may then force an inner door. This privilege is strictly confined to outer doors; so that if an officer gain admission to a house where any one lodges whom he is in search of, he may justify breaking open any of the apartments to execute his process, unless the whole house is let in lodgings: then each apartment is deemed a separate dwelling.

If an offender cannot be conveniently conveyed before a justice; or to prison, he may be put, *pro tempore*, in the stocks.

Persons apprehended in adultery, fornication, or a bawdy house, may be carried before a justice, to find sureties for their good behaviour.

Constables are to assist landlords in distraining for rent, under authority of a justice's warrant; and, in company with such landlords, may break open and enter houses and other places, to search for goods suspected to be concealed to avoid the distress.

*Penalties.*—By 33 G. 3, c. 55, if a constable, upon complaint, upon oath, before two justices, be convicted of neglect of duty, or disobedience of any lawful warrant or order, he may be fined 40s. Not going with an officer of excise on notice or request, when his presence is requisite, subjects to a penalty of £20, 7 & 8 G. 4, c. 53. A like penalty may be inflicted for not assisting, either on his own view or notice, in the execution of the laws for preventing illicit distillation, 6 G. 4, c. 80, s. 144. And by 5 G. 4, c. 83, neglecting his duty, under Vagrant Act, subjects him to a penalty of £5. Assaulting a constable, to prevent the arrest or detention of persons charged with felony, subjects to transportation for seven years, 1 & 2 G. 4, c. 88. No action can be brought against a constable for the improper discharge of his duty after six months from the time of the fact being committed.

It is a misdemeanor in a constable to discharge an offender brought to a watchhouse by a watchman in the night; and if he wilfully let a felon escape; it is felony.

The 5 V. c. 109, amended by 7 V. c. 52, regulates the districts of parish constables, and the duties of justices and overseers in their election and appointment.

#### • VII. SPECIAL, COUNTY, AND DISTRICT CONSTABULARY.

The 1 & 2 W. 4, c. 41, authorizes two or more justices, in all cases of felony or disturbance, or on the apprehension of such, to appoint any number of housekeepers and others to act as *special constables* for the maintenance of the peace and the security of persons and property. Persons *exempt by law* may be sworn in by the justices to serve for two months, under an order from the secretary of state; who may also direct any lord lieutenant to cause special constables to be sworn in throughout the whole county, or any hundred, division, or parish thereof; and no exemption allowed. Justices may frame regulations for rendering the office more efficient, and the duties, powers, and responsibilities of the special constable are extended through the entire jurisdiction of the justices appointing him; and even in case of emergency into the adjoining county. Refusing to serve, or to take the oath, or disobeying any lawful order and direction for the better discharge of the duties of the office, subjects to a penalty not exceeding £5. Refusing or omitting to deliver up the staff or other articles provided, within one week after the expiration of the office, incurs a fine not exceeding 40s.

The provisions of this act are materially extended by 2 & 3 V. c. 93, which empowers the justices of any county, in quarter sessions, to make application to the secretary of state for the establishment of a *County and District Constabulary* for the protection of the inhabitants and the security of property, provided that the number of constables does not exceed one con-

stable for every 1000 inhabitants. Rules for the pay, clothing, and accoutrements of this rural police are to be framed by the secretary of state, and the expense of its maintenance to be defrayed out of the county rates. One or more chief constables to be appointed for each county by the justices, subject to the approval of the home secretary; and the chief constables, subject to the approval of two or more justices, are to appoint superintendents and the petty constables. The constables not to resign without leave, or giving one month's notice, and are generally subject to the same regulations as the police force of the metropolis.

By 3 & 4 V. c. 88, magistrates in quarter sessions may make rules for the regulation of county and district constables, and for raising a police rate.

#### VIII. POLICE OF COUNTIES AND BOROUGHES.

The acts referred to in the last section, the 2 & 3 V. and 3 & 4 V., are rendered more effectual for the improvement of the police of *counties and boroughs* by the 19 & 20 V. c. 69. By s. 1, in every county where a constabulary has not been already established for the whole of the county, the justices at the general quarter sessions next after December 1, 1856, are to proceed to establish a sufficient police force for the whole of the county; or where a constabulary is established for a part of the county, then for the residue of the county, and to declare the number of constables requisite, and the rates of pay, and report their proceedings to the secretary of state, and upon the receipt from the secretary of such rules as are provided by 2 & 3 V. and 3 & 4 V., these acts are to take effect, and be applicable to the whole of the county, subject to the amendments of the new acts. This is not to apply to counties which report to the secretary of state prior to December 1, 1856.

By s. 3, where constabularies have been established in the division or residue of a county, such establishments are to be consolidated into one general police force, and a chief constable appointed for the county. Upon the petition of persons contributing or liable to contribute to the police rate, separate police districts may be constituted by an Order in Council in counties with a distinctive number of constables, the expense being defrayed by the districts, ss. 3, 4.

Upon the representation by the council of a borough to the secretary of state that application has been made to the justices of an adjoining county to consolidate the police of the borough and county in the way provided by 3 & 4 V., and that such consolidation has not been effected, an order in council may issue to fix the term, conditions, and date upon which such consolidation shall be effected.



By s. 6, county constables are to have like powers and duties in boroughs as borough constables have in counties. Constables to perform duties connected with police as directed by justices in session, or watch committee. No constable to receive to his own use fees for the performance of his duties. Borough constables appointed under the Municipal Corporation Act, 5 & 6 W. 4, c. 76, are disqualified from voting at parliamentary elections, or in the election of any person to a municipal office in the borough: penalty £10, and a like penalty for attempting to influence the vote of any elector, either in parliamentary or municipal elections, s. 9. Gratuities may be granted to constables incapacitated, and to officers superseded by the county police.

Annual statements to be furnished to secretary of state by justices or watch committees as to crime in counties and boroughs. Three inspectors may be appointed under the royal sign manual to inquire into the state and efficiency of the police, and whether the provisions of the acts under which they are appointed are duly observed, ss. 14, 15. On the certificate of the secretary of state that an efficient police has been established in any county or borough, *one-fourth* of the charge of pay and clothing of the police to be paid by the Treasury; but not to be paid to any borough where population does not exceed 5000, and not consolidated with the county police.

#### IX. WATCHMEN.

Watchmen and beables have power to arrest and detain in prison, for examination, persons walking in the streets at night, whom there is reasonable ground to suspect of felony, although there is no proof of felony having been committed, 3 *Taunt.* 14. But the 5 Edw. 3, c. 14, upon which this dictum appears to be partly founded, is among the obsolete acts repealed by 19 & 20 V. c. 64; and its provisions within the limits of the metropolis have been rendered more precise and comprehensive by later police enactments, as appears by the next paragraph.

Any man belonging to the metropolitan police may, during the time he is on duty, apprehend all "loose, idle, and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of any evil designs, and all persons whom he shall find, between sunset and the hour of eight in the forenoon, lying in any highway, yard, or other place, or loitering therein, and not giving a satisfactory account of themselves."

If either watchman or constable be killed in the discharge of his duty, it is murder.

## CHAPTER IV.

*Parish Officers.*

## I. PRESIDENT AND COMMISSIONERS OF POOR-LAWS.

IN the year 1834, by the 4 & 5 W. 4, c. 76, the relief of the poor in England and Wales, according to the existing laws, was placed under the control and direction of three commissioners appointed, paid, and removable by the crown; and who were authorized to make *rules* for the management of the poor and poor children, the government of workhouses, the conduct of guardians, vestries, and officers; the keeping, examining, auditing, and allowing of accounts; the making of contracts, and in all other matters connected with the relief and expenditure of the *poor*. But the commissioners were not to interfere *in any individual case* for the purpose of ordering relief. According to this act, the term *poor* included any person applying for, or receiving, relief from the poor rate, or chargeable thereto.

The power of this commission having expired, a new commission has been appointed under 10 & 11, V. c. 109, consisting of a president, with a salary, and unpaid commissioners, and four *ex officio* commissioners, namely, the lord president of the council, the lord privy seal, the home secretary of state, and the chancellor of the exchequer. Two of the commissioners, or the president alone, are competent to act, and the president, and one of the two secretaries, are eligible to seats in the house of commons. All the powers and duties of the former commissioners are transferred to the new commissioners, who have power to summon and examine witnesses on oath, and to enforce the production of papers, &c.; but so much of the previous act is repealed as required a minute of the opinions of each commissioner in case of a final difference of opinion. The commissioners are to make an annual report to her majesty, to be laid before parliament.

Rules and orders are to be made under seal, except such as are intended by the commissioners for their own guidance, and general rules must have the signatures of three or more commissioners, of whom the president shall be one. All rules and orders affecting more than one union to be deemed a *general rule*; the provision in the previous act relating to general rules is repealed, and the queen in council may disallow any general rule; but existing rules to continue in force till altered or rescinded.

By s. 26, every person who, upon any examination, shall wil-

fully give false evidence, or wilfully make a false declaration, shall, on being convicted, suffer the penalties of perjury; and every person who shall wilfully neglect to attend in obedience to any summons of the commissioners or any inspector, or to give evidence, or who shall wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, maps, plans, surveys, valuations, or writings, or copies of the same, which may be required to be produced to any person authorised to require the production, shall be deemed guilty of a misdemeanor.

Under 4 & 5 W. 4, c. 76, commissioners may call for and publish an account of all *trust and charity estates and funds* applicable to the relief of the poor; such account to be open to the inspection of owners and ratepayers.

UNIONS.—Commissioners may direct any number of parishes to be united for the relief of the poor, with a common workhouse, but each parish to be chargeable only for the costs of its own poor, whether relieved in or out of such workhouse. When a union of parishes is proposed, commissioners to inquire into the expense of the poor belonging to each parish for the three years preceding, and each parish is to contribute towards the joint fund in future in the proportion in which it has already stood with relation to the other parishes.

Commissioners may, without consent of the guardians, dissolve any union (except when united for purpose of settlement or voting), or add or take from it any parish, and make such rules as seem adapted to its altered state: but if a parish be under a local act, and the population exceed 20,000, the consent of two-thirds of the guardians is still requisite previously to a union or dissolution. United parishes may, with consent of all the guardians, and of the commissioners, be *one parish* for the purposes of *settlement among themselves*. After such agreement, the rate or proportion of contribution to the common fund is not to be varied; the settlement being common throughout the union, the distinction of each parish paying for its own poor is done away with. With the like consent of guardians and commissioners, a union may have a *joint rate* as one parish, and in such case all expenditure for the poor to be in common.

OFFICERS.—Commissioners may direct overseers and guardians to appoint *paid* officers for any parish or union, and fix their duties, mode of appointment and dismissal, salaries, and securities. Masters of workhouses and paid officers removable by commissioners, and persons so removed not competent to fill any parish office. No person convicted of felony, fraud, or perjury, eligible to hold any parish office, or have the management of the poor in any way whatever.

The word "*officer*" extends to any clergyman, schoolmaster,

medical man, vestry-clerk, treasurer, collector, assistant overseer, governor, master or mistress of workhouse, or any other person employed in carrying the laws for the relief of the poor into execution.

Clerks and officers may conduct proceedings before justices at petty sessions on behalf of the guardians, although not certificated attorneys, 7 V. c. 101, s. 68.

GUARDIANS.—These, in the interpretation clause of 4 & 5 W. 4, c. 76, are construed to mean any visitor, governor, director, manager, acting guardian, vestryman, or other officer in a parish or union, appointed or entitled to act as a manager of the poor, and in the distribution or ordering of relief under any general or local act of parliament, s. 109.

Under this act guardians are to have the entire management of the poor, and are to be elected by each parish *in union*, by the ratepayers and *owners*, within forty days of the 25th of March in every year; their number, duties, and qualification to be determined by the commissioners; but qualification not to exceed a rental of £40 a-year, and one guardian at least to be elected for each parish. They may be re-elected. Any county magistrate in the district is *ex officio* a guardian. Commissioners may direct a board of guardians to be established, with like powers, in any *single* parish, and justices to be *ex officio* members; or they may alter the number of guardians with reference to population, and if the population of a parish exceed 20,000 it may be divided into wards, having separate guardians, 7 & 8 V. c. 101.

By 12 & 13 V. c. 103, s. 13, the guardians of a union or parish, under the orders of the poor-law board, may contract to receive into their workhouse the poor of any other parish or union, in case of the overcrowding of the workhouse, the prevalence or apprehension of any epidemic or contagious disease, or to carry out any local resolution for the emigration of poor persons. Under s. 16, guardians are authorised to appropriate any money or valuable security of a pauper, so far as is necessary to reimburse them for outlay on account of such pauper.

By 14 & 15 V. c. 105, s. 3, malpractices at the election of guardians, as altering, destroying, or purloining nomination or voting paper used therein, or personating a voter, or interrupting distribution of voting papers, are made punishable with imprisonment for any period not exceeding three months. Section 4 empowers guardians to subscribe to a hospital or infirmary with consent of the Poor Law Board. Children under sixteen years who are orphans or deserted by parents, or with consent of surviving parents and the Poor Law Board, may be sent by contract to a workhouse belonging to another union or parish, not above 20 miles distant, and where there is adequate accommodation for instruction and maintenance, s. 6. Power

given by s. 12 to the guardians of two unions or parishes to refer, by mutual consent, questions of settlement, removal, or chargeability to the Poor Law Board. By s. 16, the limit of expense to be incurred in school districts, within the Metropolitan Police District, extended from one-fifth to one-third.

By 11 & 12 V. c. 110, poor persons having a fixed place of abode, who may meet with an accident or bodily casualty in any union or parish in which they have no legal settlement, are to be relieved by the officers of the parish or union in which the casualty happens; but the cost is to be reimbursed by the parish to which they belong.

By 18 & 19 V. c. 34, guardians may grant relief for enabling pauper parents to provide education for their children, if between the ages of four and sixteen years, in any school approved by the guardians.

**ELECTIONS.**—At the election of guardians, and all other elections, the votes are to be taken in *writing*, and the rights of voting in owners and ratepayers are assimilated by 7 & 8 V. c. 101. A plurality of votes allowed; if the property be rated upon a rateable value of less than £50, one vote; rateable value £50, or less than £100, two votes; £100, or less than £150, three votes; £150, but less than £200, four votes; £200, but less than £250, five votes; and if it amount to or *exceed* £250, six votes. When a person is owner and occupier he may vote in both capacities.

By 7 & 8 V. c. 101, s. 15, owners must give notice of voting before February 1st; they may vote by *proxy*: but no person can be proxy for more than four owners in one parish, unless steward or land agent; nor does appointment of proxy continue longer than two years, unless a steward or land agent. No ratepayer to vote unless rated one year, and parochial rates paid. In case of property belonging to a corporation, or to any joint stock or other company, the officer of the same may vote.

**WORKHOUSES.**—Under this designation is included any house in which the poor of any parish or union is lodged or maintained, or any house or building used at the expense of the poor rate, by any parish vestry, guardians, or overseers, for the reception, employment, classification, or relief of the poor, s. 109.

Commissioners may order workhouses to be built, hired, altered, or enlarged, with consent of a majority of owners and ratepayers voting as already described. Sums to be raised for the purpose to be charged on the rates, but not to exceed in one year's average amount, and loan borrowed to be repaid in ten equal yearly instalments. Commissioners may order workhouses *already* erected to be altered or enlarged *without consent* of the parish, but the money to be raised for the purpose must

not exceed one-tenth of one year's rates, or £50. They may make rules for the government of workhouses, and may vary by-laws already in force. Justices are empowered to see by-laws enforced, and to visit workhouses, as directed under 30 G.3, c. 49. Where no rules have been framed by commissioners, the power of any justice, medical person, or clergyman, as heretofore exercised in the visiting of workhouses, is reserved. Introducing *spirituous* or *fermented* liquors into a workhouse, without the order, in writing, of the master, subjects to a penalty of £10, or two months' imprisonment. Master of workhouse introducing prohibited liquors into the workhouse (except for his domestic use), without authority of the surgeon, justice, guardians, or commissioners; or ill-treating poor persons; or otherwise misconducting himself, is subject to a penalty of £20 or not exceeding six months' imprisonment. No *dangerous* lunatic, insane person, or idiot, to be detained in any workhouse exceeding fourteen days.

A *pauper* deserting or running away from a workhouse, carrying off clothes, or other goods, subjects to imprisonment in the house of correction for any term not less than seven days, or exceeding three calendar months. Refusing to work at any employment suited to age, strength or capacity, drunkenness or other misbehaviour, subjects to imprisonment and hard labour for any period not exceeding forty-one days, 7 V. c. 101, s. 58.

By 10 & 11 V. c. 109, s. 23, two persons, being husband and wife, and above the age of sixty years, are not compellable to live separate and apart from each other in a workhouse.

By s. 24, where boards of guardians neglect or refuse to appoint a visiting committee for the purpose of visiting the workhouse of the union, or when such committee neglect to visit it for three months, the commissioners are to appoint a paid visitor, not one of the guardians, but the appointment is to cease at the expiration of three months after the appointment of a visiting committee by the guardians.

By 11 & 12 V. c. 110, s. 9, persons chargeable upon the common fund of a union, and convicted before a justice of an offence committed against the workhouse rules while maintained therein, may be sent to the county gaol or house of correction, and the charges to borne by the county.

By s. 10, persons professing to be wayfarers or wanderers are to be searched upon admission into a workhouse, and any money found upon them to be delivered to the guardians in aid of the common fund of the union; and any person applying for relief, possessed of money or other property, of which on inquiry he shall not make a full and complete disclosure to the guardians or their officers, is to be deemed an idle and disorderly person, and punished accordingly.

.. ACCOUNTS AND CONTRACTS.—Overseers, and other officers, to

pass their accounts *half-yearly*, or oftener if commissioners direct, in addition to the annual account. No contract valid unless conformable to the rules of the commissioners. A penalty of £100, on persons having the management of the poor being concerned in any contract. No person employed in the administration of the poor laws to furnish for his own profit goods or provisions given as parochial relief; or to supply the same in respect to money ordered to be given to any person as parochial relief; penalty £5.

By 13 & 14 V. c. 101, s. 8, paupers convicted of absconding from a workhouse, and carrying away clothes, linen, or other goods, may, in addition to imprisonment, be kept to hard labour. Assaults upon a workhouse or relieving officer, while in the discharge of his duty, made similarly punishable as assault upon a constable or revenue officer, s. 9. By s. 6, no master of a workhouse or relieving officer, to be appointed to parochial or township office.

EMIGRATION.—Owners and ratepayers may raise or borrow money, not exceeding half the average yearly rate for the three preceding years, for the purpose of enabling the poor to emigrate; but such money not to be raised on the security of the rate without the consent of the commissioners, and the period of repayment not to exceed five years. Guardians are to apply the money so obtained, and subject to such limits, to defray the expense of emigration, 7 V. c. 101, s. 29.

For facilitating the emigration of *poor orphans and deserted children under sixteen years of age*, the 13 & 14 V. c. 101, s. 4, empowers guardians to expend money in and about the emigration of such children having no settlement, or whose settlement is unknown, and who are chargeable; but such emigration not to take place without previous consent of the child signified before justices in petty session, and a certificate of such consent, signed by two of the justices present, has been transmitted to the Poor Law Board.

By 14 & 15 V. c. 91, advances may be made out of money authorised to be advanced for the improvement of landed property, to facilitate the emigration of destitute persons in the Highlands or Islands of Scotland. Landowners may apply for loans for the purpose to the Inclosure Commissioners of England; and after inquiries by commissioners, that the requisite proportion of the expense has been defrayed by applicants, the Treasury may direct the issue of a provisional certificate for a loan. Emigration Commissioners may circulate notices of particulars of application.

RELIEF AND ALLOWANCE.—Commissioners to make regulations as to the relief to be given to *able-bodied persons out of the workhouse*; all relief given contrary to such regulations to be disallowed: but overseers or guardians may, under special

circumstances, delay the operation of such regulations for thirty days, reporting within ten days after the cause of such delay to the commissioners. If commissioners disapprove of such delay, they may peremptorily fix a day from which all relief granted contrary to their regulations shall be disallowed: still, in case of *emergency*, relief may be given, provided a report of the same be made to the commissioners within fifteen days after, and they approve of such departure from their regulations; or if the relief have been given in food, temporary lodging, or medicine, and have been reported as mentioned, 4 W. 4, c. 76, s. 52.

Where guardians, select vestries, or similar bodies have been established under this or any other general or local act, *no relief* is to be given except as directed by them, subject to the control of the commissioners. But in sudden and extreme cases overseers may give temporary relief to persons, whether settled or not in the parish, in articles of absolute necessity, but not *in money*. If overseers neglect or refuse to give such casual relief justices may order it; and overseers disobeying such order, liable to penalty of £5. Justices may also give an order, under like penalty, for medical relief, in case of dangerous illness, s. 54.

In any *union* formed under the act, two justices may order relief to be given *out* of the workhouse to any adult person wholly unable to work from *old age* or *infirmity of body*; but justices must certify in their order as to inability to work, and the pauper desire such out-door relief, s. 27.

Masters of workhouses and overseers are to keep daily registers of all relief to paupers. All relief given to wife or children considered relief given to the husband. Husband liable to maintain the children of his wife born *before marriage*, whether legitimate or illegitimate, till they attain the age of sixteen, or till the death of the mother: such relief as commissioners may direct to be considered as *a loan*, for which the wages of the receiver may be subsequently attached in the hands of his employer.

A *married* woman may be relieved, same as a widow, if her husband be beyond sea, in the custody of the law, or confined in a lunatic asylum; but not to affect future liability of husband for such relief, 7 V. c. 101, s. 25. A widow with a child dependent upon her, and not having had an illegitimate child since the commencement of her widowhood, may be relieved, though not in the parish of her legal settlement, s. 26.

By 13 & 14 V. c. 101, s. 5, an order for paying the whole or part of the cost of maintenance of a lunatic married woman, in any lunatic asylum, and chargeable to any parish, may be made upon her husband.



## II. HIRED SERVANTS FROM WORKHOUSES.

For the better protection of *hired servants or female paupers* under sixteen years of age, the 14 V. c. 11, s. 3, enacts that the guardians of every union or separate parish under a board of guardians, and the overseers of every parish not in union or under guardians, are to keep a register of every young person under the age of sixteen hired, or taken as a servant, from the workhouse of such union or parish, and enter particulars according to schedule; namely, age, name, date of hiring, or taking, name of master or mistress, their abode, grade, or description; such register to be signed by chairman of the board of guardians or overseer, and not to supersede register requisite under 42 G. 3, c. 46, and 7 & 8 V. c. 101.

By s. 4, the guardians or overseer, where young persons are hired from workhouse, or bound out as pauper apprentices, are required to cause the relieving officer or other authorised person to visit them twice at least in every year within the union or parish, or within five miles of any part thereof, while under the age of sixteen, and make a report in writing, if not supplied with necessary food, or subjected to cruel or illegal treatment in any respect. If the residence of such young persons exceed five miles, the duties of visitation to be discharged by the parish in which the residence is, upon notice from the union or parish from which the young persons have been bound or hired, s. 5.

By s. 6, upon complaint made of an offence against this act, or of any bodily injury inflicted upon any poor person under sixteen, for which the offender is liable to be indicted, and two justices certify that prosecution is necessary, guardians and overseers are required to prosecute; the costs of prosecution to be defrayed out of the parish funds, so far as the same may not be allowed by the court trying the indictment. Justices empowered to bind over to prosecute.—See *Servants and Apprentices*.

## III. REMOVALS OF THE POOR.

No person to be removed from any parish or workhouse till *twenty-one days* after notice of his being chargeable has been sent to the parish to which the order of removal is directed, with a copy of the examination and order; but such person may be removed directly if the order be submitted to. In case of appeal, no removal to take place till after the determination of the appeal. Notice of appeal to be given fourteen days before first day of sessions. Parish losing appeal to pay costs. Charge of relief from time of notice to be paid by parish adjudged the place of settlement; but relief under suspended order is not recoverable unless notice has been sent of such

order. Grounds of appeal to be stated in notice of appeal, and those stated can alone be gone into. Appellants to have access to the pauper for the purpose of inquiry concerning his settlement. Either party making frivolous or vexatious statements to pay costs.

In the session of 1846 important alterations were made relative to *removals of the poor*, by 9 & 10 V. c. 66. Under this act no poor person can be removed, nor any warrant be granted for removal, from any parish in which such person had previously resided for *five years*. In the computation of the five years' term of residence, time spent in the army or navy, or in prison, hospital, lunatic asylum, or during which alms or parish relief has been received, is not included. Wife or children are removable only with husband or parents. No widow who was living with her husband at the time of his decease is liable to be removed till twelve months after the death of her husband. No child, legitimate or not, under sixteen years of age, can be removed without its parent. No person becoming chargeable in respect of relief, made necessary by sickness or accident, can be removed unless the justice granting the warrant shall state in such warrant that he is satisfied that the sickness or accident will produce permanent disability. No person to acquire a settlement by exemption from liability to removal. Any officer of a parish or union, by money, promise, or other contrivance, procuring the removal of any poor person, by which such poor person becomes chargeable to another parish, is liable to a penalty not exceeding £5, nor less than 40s. The delivery of a pauper under any warrant of removal directed to the overseers at the workhouse of any parish, to any officer of such workhouse, is deemed a delivery to the overseers of such parish.

The 11 & 12 V. c. 110, enables the guardians to obtain orders of maintenance upon *relations* in respect of irremovable poor, to expend money for them as overseers or churchwardens could have done, and to recover in the county court relief advanced by way of loan on their own behalf, or on behalf of any parish, but retains the existing remedy already provided by law for the recovery of the same.

By s. 5, the guardians of any union or parish may assist the emigration of poor persons rendered immovable by 9 & 10 V. c. 66, though not settled therein, the cost to be charged on the common fund of the union. The charges imposed on the common fund to be charged as union expenses under 4 & 5 W. 4, c. 76.

By 10 & 11 V. c. 110, on the expenditure incurred by any parish or place forming part of the union, for the maintenance, relief, or burial of any person who shall have been, at any time within one year before the passing of the Removal Act of 1846, in the receipt of relief from some other parish or place, by

right of settlement, and who by the above act may be exempted from liability to removal, such expenditure shall be charged to the common fund of such union in the same manner as the cost of building workhouses and other union expenses are directed to be charged by 4 & 5 W. 4, c. 76.

#### IV. PARISH SETTLEMENT.

Since 1834, no settlement can be acquired by *hiring and service*; nor by serving a *parochial office*; nor by *occupying a tenement*, unless assessed to and paying the poor rate for one year; nor by possessing *an estate* or interest in a parish, only so long as the possessor inhabit within ten miles thereof; nor by being apprenticed to the *sea service*, 4 & 5 W. 4, c. 76, ss. 64-68.

Contracts for hiring and service entered into, but not completed at the passing of the act, will not give a settlement; nor a current but unexpired apprenticeship to the sea service, ss. 65-67.

The modes of acquiring a settlement untouched by the new act are—1. By *birth*. 2. By *parentage*. 3. By *marriage*. 4. By *apprenticeship* under 3 W. & M. c. 11.

1. The place of *birth* is, *primâ facie*, the place of settlement, 6 T. R. 653. Therefore, a bastard, having no father, is settled in the place of birth, unless he derive a settlement from his mother. But bastards born after August 14, 1834, follow the settlement of the mother until they attain the age of sixteen, or acquire a settlement in their own right, 4 & 5 W. 4, c. 76, s. 71.

2. Legitimate children are settled in the parish where their *parents* are settled, till they get a new settlement for themselves. If the parents acquire a new settlement, the children also follow, and belong to the last settlement of the father; or, after the death of the father, to the last settlement of the mother while she is unmarried, or till the child attain maturity and acquire a settlement.

3. A new settlement may be acquired by *marriage*. For a woman marrying a man who is settled in another parish changes her maiden settlement; the law not permitting the separation of husband and wife. A wife can gain no settlement separate from the husband during coverture. Hence the judges have decided, *Rex v. Leeds, 4 Burn. & Ald.*, that an Englishwoman marrying a native of Scotland or Ireland, loses all claim to parochial relief in England, and in the event of being distressed or chargeable, may be passed to the country where the husband was born; or, in case of desertion by the husband, she may be removed to the parish in which she was settled before marriage, 7 B. & C. 615.

4. Being bound *apprentice* gives a settlement where the last forty days were served.

Of the remaining modes of acquiring a settlement, by occupying a tenement of £10 yearly value, and by estate, the first, as before mentioned, is only valid when the rates have been assessed and paid for one year, and the second when coupled with residence within ten miles. As respects the ownership of an estate, the value, however small, gives a settlement, provided it be acquired by *act of law*; that is, by devise, gift, or dowry, it is a settlement; but if a man acquire it by his own act, as by purchase, then, unless the consideration advanced be £30, it is no settlement for any longer time than the person shall reside thereon.

With the view of preventing needless litigation, two cardinal and settled propositions of law may be usefully stated. *First*, that a subsequent always abrogates a prior settlement gained by the same person; and this forms the only means by which a settlement once acquired can be destroyed. The *second* point is, that no settlement can be legal which is brought about by *fraud* or *compulsion*.

**RELIEF OF CASUAL POOR.**—The rights of this class of poor under the settlement laws are thus defined by the poor-law commissioners, in their report for 1846 :—"The laws relating to the relief of the poor confer a right to relief *irrespective of settlement*. All destitute persons have a right to be relieved at the cost of the parish in which they are. This right, in the first instance, is absolute; but if a person so relieved has a settlement in another parish, the officers of the parish to which he has become chargeable, can, if they think fit, remove him to the place of his settlement. According, therefore, to the established law, a wandering poor person who applies for relief in a parish, metropolitan or rural, although he has not acquired any settlement in it, must, if he be destitute, there receive parochial relief." The commissioners further declare, "That the obligation imposed by the existing law to relieve wanderers and houseless strangers applying for relief on account of destitution in a parish in which they have not a settlement, is unquestionable." This obligation extends equally over all parts of the country, and is binding upon rural not less than metropolitan parishes. Before the interference of the poor-law commissioners in the years 1837, 1838, and 1839, it was a general practice in the metropolitan parishes to refuse relief to wanderers, on the ground that they had no settlement in the parish. This practice has, to a considerable extent, been changed in consequence of the measures taken by the commissioners, and less distinction has been made between settled and other poor with respect to relief. But the measures taken by the commissioners altered not the law, but the practice which had been

established in the London parishes; on the contrary, their interference was, as they stated in their letters, founded on a desire to bring the practice into accordance with the law.

**BURIAL OF PAUPERS.**—Paupers must be buried in the place where they die, or are found, and the expense charged to their parish; unless they or their relations have expressed a wish to be buried in their own parish. Burials to be in the churchyard or other consecrated ground, and fees of burial to be paid out of the poor rates. Poor-law officers recovering money, or deriving any emolument from the burial of a pauper, or the sale of the body for anatomical purposes, subject to a penalty not exceeding £5, 7 V. c. 101, s. 31.

By 13 & 14 V. c. 101, the guardians of any parish or union may, subject to the approval of the Poor Law Board, contribute out of the poor rates or common fund towards the enlargement of any churchyard or consecrated burial ground wherein the workhouse is situated, or any other parish of the union, and may bury therein any person dying in the workhouse; provided the relatives of the deceased do not object.

**SCOTCH AND IRISH PAUPERS.**—The 3 & 4 W. 4, c. 40, enacts that two justices, upon complaint of overseer and churchwarden, may order the removal of Scotch or Irish poor, becoming chargeable and not having obtained a settlement in England, to the place of their birth; the removal to be made by *sea* or *land*, in the manner directed by the justices at quarter sessions, and the expense in the first instance to be defrayed by the complaining parish, to be afterward repaid out of the county rate. Cities, boroughs, or other places not contributing to the county rate, to raise a special assessment for defraying the expense of such removals.

#### V. BASTARDY.

By 7 & 8 V. c. 101, if any single woman be with child, or delivered of a bastard, or who has been delivered six months before the passing of the act, she may, either before the birth, or within twelve months after, or at *any time after* upon proof that the alleged father has paid money for the maintenance of the child within twelve months next after birth, make application to justice of the place where she lives, for a summons to the father to appear within six days at a petty session, s. 2.

Justices at the petty session, to hear the evidence of the mother, and of such others as she may produce, and also the evidence of the alleged father; and if the evidence of the mother be corroborated in some material particular by other testimony to their satisfaction, they may, having regard to all the circumstances of the case, make an order on the putative father to pay the mother, or other person appointed by them to have care of the child, a weekly sum, with costs, including 10s.

for the midwife, and 10s. towards the burial of the child if it have died before the making of the order. If the application be made by the mother, before the birth, or within two calendar months after birth, such weekly sum may be calculated from the birth at a rate of not exceeding 5s. weekly, for the first six weeks; in other cases payment not to exceed 2s. 6d. weekly from the time of making the application. If putative father fail to pay for one calendar month after the order, a warrant may be issued for his apprehension, and if still refractory, the payments due, with costs, may be recovered by sale of his goods; meanwhile he may be kept in custody for seven days, if a return cannot be sooner made to the distress warrant. If sufficient distress cannot be had to defray arrears and costs, putative father may be committed to the house of correction for not exceeding *three calendar months*; or till arrears and expenses be paid. But if women suffer payments to be in arrear for more than *thirteen successive weeks*, without applying to a justice, they cannot recover them for more than thirteen weeks, s. 3.

Justices may adjourn the hearing of bastardy cases, as often as may seem fit. No order will be made unless applied for within forty days from the service of the summons after birth. Putative father may appeal to the quarter sessions by giving notice to the mother within twenty-four hours after the adjudication and order, and within seven days after giving sufficient security for costs, s. 4.

Money under the order must be paid to the *mother*, unless she be of unsound mind, imprisoned, or transported; in case of death of mother or incapacity, money to be paid to person appointed by justices to have custody of the child. Order for payment to be in force only till the child has attained the age of thirteen years, or till its death, or death of the mother.

Any woman deserting or neglecting to maintain her bastard, who is able to maintain it, whereby it becomes chargeable, may be punished as a rogue and vagabond.

No parish officer can have the care of a bastard, or receive money for its maintenance, or interfere in any application for an order, without liability to a penalty of 40s. Officers guilty of a misdemeanor who seek to promote the marriage of the mother of a bastard; and the person appointed to have the care of a bastard misapplying the money for its use, withholding from it proper nourishment, or otherwise ill-treating the child, is liable to a penalty of £10, s. 8.

Existing orders not affected by the act; but orders made before August, 1834, to cease January 1, 1849.

This act is explained by 8 V. c. 10, and enables the mother, where an order has been quashed for defect in form, to apply again within six months. In appeals, the mother may be examined; the parties may be heard by counsel or attorney;

in default of sufficient distress, the father may be committed to prison.

A man marrying a woman with an illegitimate child is bound to maintain it same as if legitimate till it attain the age of sixteen.

#### VI. PARISH SCHOOLS AND ASYLUMS.

By 7 & 8 V. c. 101, s. 40, the poor-law commissioners may combine unions or parishes into school districts for any class of infant poor, not above the age of sixteen years, and who are orphans or deserted by their parents, or whose parents consent to the placing of their children in the district school. Parishes only to be included in a district whose distances do not exceed fifteen miles; nor is any parish to be included if subject to local act, or the population exceed 20,000, without consent, in writing, of a majority of the guardians.

This act is repealed, so far as it refers to the average contributions of unions for district schools, by 13 V. c. 11, enacting that the poor-law board shall cause an inquiry to be made as to the average annual expense incurred by or on account of the relief of the poor in every union and parish forming an integral part of such district during the three years ending on the 25th day of March next before the date of the formation of such district, such expense to include the cost of the relief of the poor, and in each case the payment of the salaries of all officers engaged in the administration of the relief of the poor, and other like expenses of current and ordinary nature; and the board shall by an order declare the respective averages so ascertained, and after the issue of such order the several unions and parishes comprised in any such district shall contribute according to the proportion of the averages declared in such order until the same shall be altered by any subsequent order of the board. Commissioners may, when they think fit, direct fresh inquiries with the view to the declaration of new averages.

By 11 & 12 V. c. 82, the limitations imposed by the above act on the area of school districts and on the expense of school buildings are removed, so as not to apply to prevent the combination of any union or parish not in union when the major part of the guardians of the several unions or parishes not in union, proposed to be combined, shall previously thereto consent in writing to such combination.

In addition to the sums authorised by 7 & 8 V. c. 101, to be raised by the board of management of a school district, s. 3 of 13 & 14 V. c. 101, empowers to raise any further sums required for the site of a school, or for the training of children maintained thereat, or for the site of any addition to such school.

For the temporary relief of poor persons found destitute and without lodging, within the district of the metropolitan police, or the city of London, or in the boroughs of Liverpool, Man-

chester, Bristol, Leeds, and Birmingham; and for avoiding the introduction of infectious diseases into the regular workhouses, the commissioners may form DISTRICT ASYLUMS for the relief and setting to work of destitute houseless poor, who are not charged with any offence, and who apply for relief, or become chargeable to the poor rates.

District boards are to be formed for the management of schools and asylums; members to be ratepayers with a qualification not exceeding the net annual value of £40, and chosen for three years by the guardians, or, if no guardians, by the overseers. Chairman of board of guardians to be, if he consent, *ex officio* chairman of the district board.

Members of the district board to have generally the powers of guardians, subject to the commissioners. They may appoint paid officers and one chaplain at least, with the consent of the bishop, for each establishment. No inmate of school or asylum to be obliged to attend religious service contrary to his persuasion, or that of parents or relatives. Dissenting ministers may visit school or asylum at reasonable times according to regulations. Government inspectors may visit schools to ascertain proficiency of scholars.

Money may be raised for the purchase of sites and the erection or hire of buildings for schools and asylums, but not to exceed, in amount, one-fifth of the average annual expenditure for the relief of the poor, and must be repaid within twenty years. Guardians may inspect and visit asylums. Children may be sent to district school from parishes not included in the district, if not distant more than twenty miles.

Any poor person found destitute, and not professing to be settled in any parish within the district, admissible into the asylum for temporary relief and work. Constables to conduct the destitute to the asylum for the houseless.

Poor persons relieved with food and lodging for the night cannot be detained against their will longer than the breakfast hour, and four hours after, unless they have become lawfully punishable for misbehaviour. Persons relieved in asylums are subject to and incur the same liabilities as if in or relieved in a workhouse. Establishment of an asylum does not exonerate guardians, overseers, or relieving officers, from existing obligations to grant prompt relief to the poor in cases of sudden and urgent necessity.

## VII. PARISH VESTRIES.

Vestries are either *open* or *select*: in the former, every parishioner who has paid his rates is eligible to attend, and all matters submitted to the vestry must be decided by a majority of votes. The *select* vestry consists of a limited number of individuals, who derive their powers either from ancient custom,



vesting in certain persons the management of the affairs of the parish, or from act of parliament: in these, vacancies are filled up either by the vestrymen themselves, or the parishioners.

By the 58 G. 3, c. 69, no meeting of the inhabitants in vestry shall be held unless at least three days' previous notice have been given. But by 1 V. c. 45, no public notice for a vestry meeting or any other matter shall be given in any *church* or *chapel* during or after divine service, or at the door of any church or chapel at the conclusion of divine service. Notices heretofore usually given during, or after, divine service, &c., to be affixed to the church doors instead. Notices for holding vestries to be signed by a churchwarden of the church or chapel, or by the rector, vicar, or curate of such parish, or by an overseer of the poor of such parish. Decrees, &c., not to be read in churches. But the act not to extend to bans, nor to various notices connected with divine service.

The 13 & 14 V. c. 57, prohibits the holding of vestry or other parochial meeting in the parish church or chapel, "as productive of scandal to religion," in places where the population exceeds 2000, on application to the poor-law board by the churchwardens, pursuant to a resolution of the vestry of the parish. After the publication of the order of the poor-law commissioners, and with their sanction and a majority of the vestry, other places may be provided within the parish for vestry or other usual meeting. By s. 6, in parishes with a population exceeding 2000, the election and payment of the vestry clerk may be regulated on application by an order of the commissioners. Vestry clerk elected conformably with such order not to be removable except by resolution of vestry and consent of poor-law board. S. 7 specifies the duties of the vestry clerk. Salary of vestry clerk to be fixed by the commissioners.

At a vestry meeting every inhabitant, whose poor assessment is less than £50, is entitled to give one vote; amounting to £50 or upwards, he is entitled to one vote for every £25 above that sum; provided that no inhabitant shall be entitled to more than six votes, 58 G. 3, c. 69, s. 3.

If the rector, vicar, or perpetual curate is not present at a vestry, a chairman may be appointed, by plurality of votes; and in case of equality of votes on any occasion, the chairman, in addition to the votes he may have in right of his assessment, is to have the casting vote.

Under 59 G. 3, c. 12, the parishioners may appoint annually, a select vestry, for the management of the concerns of the poor, consisting of not more than twenty, nor less than five, substantial householders or occupiers within the parish; and any three of them, two of whom shall neither be overseers nor churchwardens, shall be a *quorum*, competent to inquire into the state of the poor, and to determine proper objects for relief.

Minutes are to be kept of the proceedings of the select vestry, which, as well as reports of their proceedings, are to be laid before the inhabitants, in general vestry, in the months of March and October in every year.

The determination of the major part of the parishioners assembled in vestry binds the whole parish; and, as respects the validity of the proceedings, it is immaterial how few persons attend, if due notice has been given of holding it.

Under the Poor Law Acts, "*vestry*" means any open, customary, or select vestry, or any meeting of inhabitants convened by any notice, such as would have been required for the assembling of a meeting in vestry, at which meeting business relative to the poor, or the rates, shall be transacted or taken into consideration, 4 & 5 W. 4, c. 76, s. 109.

The poor-law commissioners may make rules for the control and guidance of vestries; and commissioners and assistant commissioners may attend and take part in discussion, but not vote, ss. 15, 21.

The sections in 58 G. 3, c. 69, and 59 G. 3, c. 85, which disqualified persons from voting in vestries who had not paid their rates, have been modified by 16 & 17 V. c. 65, enacting that "no person shall be required, in order to be entitled to vote or be present at any vestry meeting held under the said acts, to have paid any rate for the relief of the poor, which shall have been made or become due within *three calendar months* immediately preceding such vestry meeting."

By Hobhouse's Vestry Act, the 1 & 2 W. 4, c. 60, parishioners are empowered to alter the constitution of their vestries, and appoint auditors of accounts; and this act may be adopted in any parish in England and Wales, subject to certain regulations and exceptions, which will be mentioned. One-fifth of the ratepayers, or any number amounting to *fifty*, may, between December 1st and March 1st, present a requisition with their names and abodes, to one or more of the churchwardens, requiring them to call a meeting to ascertain whether a majority of the ratepayers are favourable to the adoption of the act. Upon receipt of the requisition, and first Sunday after, public notice to be given on the door of every church or chapel of the Establishment, specifying a place and day, not earlier than ten, nor later than twenty-one days, for the ratepayers to signify, by their votes, for or against the adoption of the act; the votes to be taken on three successive days, between the hours of eight in the morning and four in the afternoon. A *majority* of the ratepayers must vote, and two-thirds of them voting in favour of the act, it is to be declared adopted. Ratepayers not to vote, unless *rated for one year*, and paid all parochial rates made six months preceding the day of voting. Vestry to consist of not less than twelve resident householders, where the rated house-

holders do not exceed 1000; if they exceed 1000, 24 vestrymen to be chosen; if they exceed 2000, 36 vestrymen to be chosen; and so on, at the rate of 12 additional vestrymen for every 1000 rated householders; but the number of vestrymen in no case to exceed 120, unless where a greater number has been fixed by special act of parliament. This act also regulates the election of auditors and the management of charities, but it is not to extend to any parish where there are not more than 800 ratepayers, except such parish is within or part of any city or town. Vestries elected under it may direct the mode of parish relief, subject to the guidance of the poor-law commissioners.

This act is repealed in respect of parishes in the metropolis by the Local Management Act of 1855, the 18 & 19 V. c. 120.

#### VIII. ASSESSMENT OF THE POOR RATE.

The poor rate is a charge imposed by the 43 Eliz. c. 2, for the relief and maintenance of the poor; and in general every description of property lying within the parish, whether real or personal, which has an occupier, and from which a *yearly* profit arises, is rateable. The power of making the rate belongs to the churchwardens and overseers, or the major part of them; and, though it is more conciliatory, it is not necessary for this purpose that they should have the concurrence of the inhabitants, either in vestry or otherwise.

A farmer is not rateable for his stock, though a tradesman is for his stock in trade, if its value can be ascertained, 6 *T. R.* 154. But the inconvenience of rating stock in trade has caused the power to be suspended by annual statutes.

By 3 W. 4, c. 30, all churches, chapels, meeting-houses, or premises *exclusively* appropriated to public religious worship, are exempt from poor and church rates. Using such places for a Sunday or infant school is not a secular appropriation rendering them liable to assessment.

Tolls taken on a river are liable to the poor rate, as well as tolls taken in corporations.

Ships are rateable in the parish to which they belong.

Hospital lands are chargeable to the poor, though the hospital itself is exempt.

Ale-houses, having no *legal* occupier, are not taxable as such under the poor-laws.

Money in a man's house or possession is not rateable; but personal property, if visible, and yielding a permanent annual profit, is rateable, 1 *T. R.* 727.

The possessions of the crown are not rateable, *Amherst v. Somers*, 2 *T. R.* 372; but this exemption does not extend to such property occupied by the servants of the crown, and of which they have a beneficial enjoyment.

Coal and slate mines are rateable, but iron and lead mines are exempt.

Church tithe and glebe are rateable.

Water and gas companies are rateable; so are railroads: and, in general, all property the amount of which is ascertainable, and of which the owner has a beneficial enjoyment, is rateable to the poor.

In assessing rates, it is the occupier of the premises, not the lessor or landlord, who is liable to the payment. But by the 59 G. 3, c. 12, a parish vestry may direct that the *owner* or *lessor* of houses or dwellings, the rent of which does not exceed £20, nor is less than £6, and which are let for any term less than a year, may, in respect to such houses or dwellings, be assessed to the poor rate instead of the occupier. The goods of such occupier may be distrained for the rates to the amount of the rent actually due; and the occupier, paying the rates, is empowered to deduct the amount from his rent.

Under 54 G. 3, c. 170, two or more justices may, on proof on oath of inability to pay, and with consent of parish officers, exonerate any poor person from the payment of the rate, and strike out his name from the assessment.

By 6 & 7 W. 4, c. 96, provision is made for introducing a uniform mode of making rates for the relief of the poor. The poor rate to be made upon an estimate of the *net annual value* of the property rateable; that is to say, of the rent at which it may be reasonably expected to let, after deducting the usual tenants' rates, taxes, and charges; but not to alter the relative liabilities of property as heretofore assessed. Upon a representation from the board of guardians, or a majority of the churchwardens and overseers, the commissioners may direct a new survey and valuation upon the principle of the act. Ratepayers may take copies or extracts of rates gratis.

**ASSESSMENT OF SMALL TENEMENTS.**—The collection of poor rates and highway rates assessed on occupiers of tenements not exceeding in yearly rateable value £6, having been found expensive and difficult, the 13 & 14 V. c. 99, empowers vestries, if they think fit, to rate the *owner* instead of occupier, and the order for rating owners to continue unless rescinded by a majority of two-thirds of persons present at a vestry summoned for the purpose any time after the expiration of two years from the making of the order; but vestry order not to cease till the expiration of three years after made. Owners to be rated at a reduced scale, namely, at three-fourths, or one-fourth less amount than occupiers. Rates assessed on owners made recoverable from them by distress or suit in the same way as from occupiers. Rating the owner does not deprive the occupier of any municipal privileges he may be entitled to under the Corporation Act, 5 & 6 W. 4, c. 76. Owners of such small tenements, held for longer periods than from year to year, may add the rate

paid to the rent, and which they are entitled to recover from occupier same as arrears of rent. This act does not extend to places where owners are made liable to the relief of the poor under any local act.

The act for introducing a poor law into Ireland, under the control of the poor-law commissioners, is the 2 V. c. 56, and has been amended by subsequent statutes.

#### IX. CHURCHWARDENS.

Churchwardens are chosen annually, on the 28th of March, or within fourteen days next after, either by the minister, the parish, or both together, as custom or statute directs. They represent the body of the parish, and are appointed to look after the church, and observe the behaviour of the parishioners, in such matters as appertain to ecclesiastical censure and jurisdiction.

The usual mode of choosing churchwardens is, for those in office to nominate two persons to succeed them; but this mode is not exclusive of other methods, and, though customary, is not absolutely necessary. The regular mode of proceeding in their appointment is by poll: but Sir John Nicholl, in *Palmer v. Roffey*, expressed a doubt whether a poll, though demanded, must be granted.

Until a churchwarden has taken the oath of office at the next visitation after his election, he cannot act in his official capacity, nor have any power to make or levy any rate, or reimburse himself for any money advanced to the parish, or do any other act in virtue of his parochial functions.

Generally speaking, all the inhabitants of the parish are liable to serve in the office, except peers and members of parliament, clergymen, barristers, attorneys, physicians, surgeons, aldermen, officers of the customs, and other persons whose avocations require constant personal attendance; aliens, papists, Jews, dissenting preachers, and persons living out of the parish are disqualified.

The duties of the office are to bind out poor children apprentice; to collect and disburse assessments, made by the parishioners, for the repair of the church; to keep the keys of the belfry, and take care the bells are rung only on proper occasions; during a vacancy of the benefice, to observe that the church is properly aired and kept clean, and in good repair; to provide all requisites for the communion service, christenings, and other ceremonies; to prevent indecent or disorderly behaviour at church; for which purpose they may, without being guilty of an assault, take off a person's hat, or even turn him out of the church; to maintain a due observance of the Lord's day by shopkeepers and others, and prevent all tipping in ale-houses during the hours of divine service; to assist the overseers in making out the list of persons qualified to serve on

juries; to cause dead human bodies, cast on shore, to be decently interred; to apprehend and safely secure all lunatics and insane persons; to see that the parson does his duty according to the rites of the Church of England; to levy the sum of twelve-pence on all persons not resorting to the parish church on Sundays and holidays (excepting Dissenters and Roman Catholics), and the sum of three shillings and fourpence for using unlawful sports on these days; lastly, to see that the minister enters in the register all weddings and other matters required by the Registration Act; and to give public and proper notice to the parishioners of the holding of vestries.

The churchwardens have such special property in the organ, bells, parish books, Bible, surplice, and chalice, that they may bring an action, in their joint names, for any damage they sustain.

The SEATS of the church, being fixed to the freehold, are the common property of all the parishioners who contribute to the repair of the church; and the churchwardens, alone, cannot dispose of them; nor the churchwardens and rector, jointly, without consent of the ordinary, except by special custom, as in London, where they are at the disposal of the churchwardens, under the control of the parish.

The seating and arranging the parishioners in the church is vested in the churchwardens, in doing which they are to consult the general accommodation; for though the parishioners have a claim to be seated according to their rank and station, the churchwardens are not, in making the classification, to overlook the claims of all the parishioners to be seated, if sittings can be obtained for them, 1 *Hagg*. 314. And no power but the Legislature can deprive the inhabitants of their general right in this particular.

A seat, or priority in a seat, in the body of the church, may be held by custom, as belonging to a *house*, if it has been used or repaired, time out of mind, by the inhabitants of such house: it cannot be claimed by right of land; it must be claimed as belonging to the house in respect of the inhabitancy. It may also be prescribed for as appurtenant to a house out of the parish, *Lonsley v. Hayward*, 1 *Y. & J.* 588.

Trespass will not lie for entering into a pew; because the plaintiff has not the exclusive possession, the possession of the church being in the parson, 1 *T. R.* 43.

The pulpit is the property of the parson, and the churchwardens cannot let any other minister have the use of it without consent of the incumbent.

Every churchwarden is an overseer of the poor, by 43 Eliz. c. 2; and is so considered under the 4 & 5 W. 4, c. 76, s. 109, so far as he is authorized or required to act in the management of the poor, or of the poor rate.

Under the church-building act, 58 G. 3, c. 45, two churchwardens of each new church are to be chosen, one by the incumbent, the other by the parishioners. Churchwardens and overseers, within ten days after nomination, to deliver to their successors their *accounts*, and all moneys, goods, and things appertaining to their office; such accounts to be verified before a justice, who shall sign and attest the same, 17 G. 2, c. 38, s. 1. By 50 G. 3, c. 49, s. 1, such accounts must be submitted to two or more county justices in petty sessions within fourteen days; and such justices may disallow any charges they think unfounded, and reduce such as appear exorbitant. Refusing to submit such accounts, to verify them on oath, or to deliver up moneys and goods, subjects to imprisonment and distress for arrears. But officers may appeal to quarter sessions against any disallowance or reduction of their charges, s. 2.

#### X. OVERSEERS.

The exemptions from serving the office of overseer are the same as those of churchwarden; and, indeed, the exemptions there specified extend to all parochial offices.

A woman may be appointed overseer of the poor, 2 *T. R.* 395.

Overseers are chosen by two or more justices from among the resident householders paying the poor assessment: they must be substantial householders, and such must be expressed in their appointment. They are usually adopted by the justices, from a *list* nominative by the parishioners assembled in vestry, those at the head of the list being mostly chosen. In the city of London the appointment by one alderman is sufficient. By 54 G. 3, c. 91, they are to be appointed on the 25th of March, or within fourteen days next after.

Some doubts having arisen as to the proper authority for the appointment of *overseers* of the poor in certain parishes comprised within certain cities and boroughs under 43 Eliz. c. 2, the 12 V. c. 8, enacts, that justices having jurisdiction in such cities and boroughs shall have the *exclusive right* of appointing overseers therein, same as the justices of any county have in respect of the overseers of parishes within the county. The act also repeals so much of the 43 Eliz. as subjects the mayor, aldermen, and head officer of any city, town, or place corporate, to a penalty of £5 upon default of the nomination of overseers. The act does not apply to the city of London, or places with local acts.

Further, doubts having been entertained as to the coequal jurisdiction of city and borough justices and county justices, under 43 Eliz. c. 2, in certain matters relating to the poor,—they are removed by the 12 & 13 V. c. 64, enacting, that all powers which may be exercised out of general or quarter sessions by two or more county justices, may be exercised by two or more city or

borough justices having jurisdiction therein. The provisions of these two acts, 12 & 13 V., are explained by 15 & 16 V. c. 38.

By 12 & 13 V. c. 103, no person is to be appointed overseer who is directly or indirectly concerned in any contract for the supply of goods, materials, or provisions for the workhouse, or for the relief of the poor of the parish, or of the union comprising such parish.

The duties of overseers consist, First, in raising, by rate on the inhabitants, the sums necessary for the relief of the poor, impotent, old, blind, lame, and such others as are not able to work; and in providing a stock of hemp, flax, wool, thread, iron, and other necessary ware for setting the poor to work. Secondly, in apprenticing poor children, and setting to work the children of parents unable to maintain them. Lastly, in setting to work all persons, married or unmarried, having no means to maintain them, and who use no ordinary and daily trade of life to get their living by, 43 Eliz. c. 2, ss. 1, 2.

Overseers, in granting relief to the poor, are entirely under the direction of the guardians, vestry, or other governing authority; they have no discretionary power in granting relief, except in extreme emergencies, and in no case *in money*.

Under 2 & 3 V. c. 84, in case the contribution, by overseers or other officers, of any parish, of moneys required by the board of guardians is *in arrear*, two justices may, by warrant, on application from the chairman of the board, cause the amount of the contribution in arrear to be levied on the overseers or officers, and recovered from *them* in like manner as money assessed for the relief of the poor may be levied and recovered. Collectors of the rates, appointed pursuant to an order of the poor-law commissioners, have the same powers and protection extended to them as overseers, s. 2.

The 12 & 13 V. c. 65, after stating that there are several parishes and places, parts of which are comprised in boroughs, not subject to contribute to the *county rate*, or *county or district police rate*, and that there are parishes, part of which are comprised in boroughs that are subject to such rates, while parts out of the borough are not liable,—enacts that the overseer of parishes situated partly within borough, and partly without, may collect the aforesaid rates, leviable on the part of the parish not comprised within the borough. Similar provisions are made for the collection of the borough rate in places similarly situated.

By 59 G. 3, c. 12, the inhabitants in vestry assembled may elect one or more *assistant overseers*, and justices are required to appoint the assistant overseers so nominated. Such paid officers are removable by the poor-law commissioners, and if removed, are not competent to fill any office connected with the relief of the poor, 4 & 5 W. 4, c. 76, s. 48.



Overseers, with the consent of the inhabitants, may hire any house, or contract with any person, for the lodging, maintaining, and employing the poor, and take the benefit of their work and service for the use of the poor in general. But poor-law commissioners may make rules as to contracts; and contracts contrary thereto may be disallowed, 4 & 5 W. 4, c. 76, s. 49.

Persons *threatening* to run away and leave their families chargeable, or being able and refusing to work and maintain them, may be committed to the house of correction.

Where a family is left chargeable, the overseers may seize, with the order of the justices, so much of the rents and profits of the father as will maintain them. The husband is liable for all relief given to his wife or children, under the age of sixteen, and such relief may be considered a *loan*, for which the wages of the party may be attached in the hands of his employer, 4 & 5 W. 4, c. 76, ss. 56, 58.

Seamen's wages and pensions may be made available to the maintenance of their families when chargeable, 59 G. 3, c. 15.

Books must be kept open for the inspection of the parishioners, in which shall be registered the names of persons receiving relief, the time when they were first admitted, and the occasion which reduced them to that necessity.

Poor children, whose parents are unable to provide for them, may be bound out apprentice; if male, to the age of twenty-one; if female, to the age of twenty-one, or till married. The inhabitants are not merely at liberty to take, but may be compelled to take such poor apprentices. Boys may be bound apprentice from the age of ten to twenty-one to the sea-service, and from the age of eight to sixteen to chimney-sweeping.

By 55 G. 3, c. 137, s. 6, no churchwarden or overseer of the poor, nor any person having the management of them, shall furnish, *for his own profit*, any provisions or material for their use, under a penalty of £100, except there should not be a person competent or willing to undertake it in the parish. Notice of all contracts for supplying workhouses must be publicly advertised at least seven days prior to the time appointed for receiving proposals for the same. Penalty extended to officers appointed under 4 & 5 W. 4, c. 76, s. 51.

By 1 & 2 W. 4, c. 42, churchwardens and overseers may hire and lease any quantity of land within or near the parish, not exceeding *fifty acres*, for the use and employment of the poor. They may also inclose for the use of the parish any part of the waste, not exceeding fifty acres, with consent of the lord of the manor and major part in value of persons having right of common. By another act, 1 & 2 W. 4, c. 59, the parish officers, with consent of the Treasury, may inclose fifty acres from any waste or forest lands of the crown, for the use of the parish.

But no poor person by renting land so inclosed gains thereby a settlement.

By 4 W. 4, c. 76, ss. 95-97, overseer, assistant overseer, master of workhouse, or other officer, wilfully disobeying the orders of justices and guardians in carrying into effect the rules of the commissioners, to forfeit any sum not exceeding £5. No overseer to be prosecuted for not executing illegal orders of justices or guardians. Overseer or other officer purloining, wasting, or misapplying any moneys or goods, to forfeit £20, and treble the value of the property. Owner, ratepayer, or inhabitant competent witness.

By 7 & 8 V. c. 101, s. 63, if any overseer neglect to make or collect sufficient rates for the relief of the poor, or to pay such rates to the guardians, by which any relief directed by the guardians to be given to the poor shall be delayed for seven days, such overseer shall, on conviction, forfeit not exceeding £20.

Overseers cannot be appointed, nor can a poor rate be levied, in any place that was not anciently either a parish or township. Many districts at present form no part of a parish or township; and the poor of such districts, if unable to remove themselves to a parochial division of the country, where they will be entitled to relief as casual poor, may, so far as the law is concerned, perish of want.

PARLIAMENTARY ELECTIONS.—Agreeably with the 6 V. c. 18, the overseers, having received printed forms on or before the 10th of June from the clerks of the peace, must give notice on or before the 20th, requiring all persons entitled to vote for a *county* member, and who are not already upon the existing register, or who have changed their qualification or place of abode, to send their names in a prescribed form, claiming to be placed on the register, to the overseer, on or before the 20th July next ensuing.

On the last day of July, the overseers must prepare alphabetical lists of claimants; writing 'objected' against such as are already on the list, or he may object to, or 'dead' if he has reason to believe the claimant dead. List of voters to be printed on or before August 1, of which list a copy must be kept by the overseer for the inspection of any person without fee, at any time between the hours of ten and four of every day, except Sunday, during the first fourteen days after the day of publication, and to furnish copies at a fixed price. List of claimants must be delivered to the clerk of the peace before the 29th August.

In cities and boroughs overseers receive the printed forms from the town clerks, but must give notice before the 20th June in every year as to payment of rates and taxes, as already noticed under the head of *House of Commons*.

List of voters must be affixed on the outside of every church or public place of worship, or the town-hall, or other conspicuous place, during the two Sundays after August 1st. If notices or lists be removed or damaged, they must be restored; but wilfully removing or damaging them subjects the offender to a penalty of 40s. or not less than 10s.

Overseer or other person who wilfully contravenes or disobeys any provision of the Reform Act, is liable to a penalty of £500, 2 W. 4, c. 45, s. 70.

#### XI. PARISH CLERKS.

These were formerly in orders, and some continue to be. They are usually appointed by the incumbent; but, by custom, may be chosen by the parishioners. By 59 G. 3, c. 134, the clerk in every church or chapel built under the Church-building Act, is appointed annually by the minister. A parish clerk must be at least twenty years of age; be able to read and write, of honest conversation, and have a competent knowledge of psalmody, in order that he may lead the parishioners in this part of their devotion. Parish clerks, in holy orders, may, under a recent statute, be licensed as assistant curates.

#### XII. SEXTON.

Sextons are chosen by the minister, and their business is to keep the church and pews cleanly swept and sufficiently aired; to make graves and open vaults for the burial of the dead; to provide (under the churchwardens' direction) candles for lighting the church, bread and wine and other necessities for the communion, and also water for baptism; to attend the church during divine service, in order to open the pew doors for the parishioners, keep out dogs, and prevent disturbance. Their salaries are either according to the custom of parishes, or are settled by the vestry; as are also their fees. Sextons and parish clerks, by the common law, have a freehold in their offices; therefore, though they may be punished, they cannot be deprived by ecclesiastical censure.

#### XIII. VESTRY CLERKS

Are chosen by the vestry during pleasure. Their business is to attend parish meetings; to draw up and copy all orders and other acts of the vestry, and to give copies thereof to the parishioners when required. To this officer, too, until the late changes, was generally assigned the difficult task of examining the poor relative to their legal settlement.

#### XIV. BEADLE.

This officer is also appointed by the vestry. His business is to give notice when a vestry is appointed; to attend upon it

when met, and execute its orders. He is also to assist the churchwardens, overseers, and constables in their respective duties, and make himself generally useful in vestry and parish business.

#### XV. SURVEYORS OF THE HIGHWAYS.

Every parish is bound to keep the highways passing through it in repair, unless, by reason of the tenure of land, or otherwise, this office is consigned to private persons. For this purpose, surveyors of the highways are appointed; and the 5 & 6 W. 4, c. 50, directs that they be annually elected by the parishioners, at their first vestry meeting for the nomination of overseers of the poor. Qualification of a surveyor to be property of the annual value of £10, or a personal estate of the value of £100, or tenancy of the yearly value of £20. Penalty on surveyor refusing to serve, £20. A salaried surveyor may be appointed. Parishes may be formed into districts, and a district surveyor chosen. Surveyors of all parishes (except within three miles of the General Post Office, London) to erect direction posts or stones at all cross roads, with distinct inscriptions, for the use of travellers.

### CHAPTER V.

#### *Corporations.*

A CORPORATION consists of one or more individuals, created by royal charter, act of parliament, or prescription, and inheriting, in its corporate capacity, certain properties, rights, and immunities, which it may transmit in perpetuity to its successor: the main object of such institution being security of possession and uninterrupted succession, a kind of artificial person is created, not liable to the ordinary casualties which affect the transmission of private rights, but capable by its constitution of indefinitely continuing its own existence.

A corporation or body corporate may either be a *lay* or *ecclesiastical* body. *Ecclesiastical* corporations are where the members that compose them are spiritual persons; such as bishops, certain deans, and prebendaries; all archdeacons, parsons, and vicars. *Lay* corporations are either civil or eleemosynary; the former are chiefly established for the government of towns, public improvements, or the advancement of commerce and learning; the latter for the perpetual distribution of the free alms or bounty of the founder: and of which kind are all hospitals for the poor, and all colleges, both in the national universities, and at Manchester, Eton, and Winchester.

Corporations are either *sole* or *aggregate*, that is, consisting of one or many ; the queen, a bishop, dean, parson, or vicar, is a corporation sole, being perpetual in their successor. Corporations aggregate are commonly the mayor and burgesses of a town ; the head and fellows of a college ; the dean and chapter of a cathedral church.

A *name* is essential to every corporation, by which it may be known, and do all legal acts.

The powers usually annexed to corporate bodies are, 1. To have, by descent, election, or otherwise, perpetual succession. 2. To sue and be sued, and do all other acts which individuals may do, in their corporate capacity. 3. To purchase lands, and have a common seal. 4. To make by-laws for the better government of the corporation. But no trading company is allowed to make by-laws which may affect the queen's prerogative or the interest of individuals, unless approved by the chancellor, treasurer, and chief justices, or the judges of assize ; and even though so approved, if contrary to law, they are void.

Corporations cannot commit felony or treason ; they cannot appear in legal proceedings, except by their attorney or officers acting for them. They are not generally bound by their common seal ; not by bill or note, except in the case of trading companies. Those having municipal jurisdiction, as town corporations, may frame laws binding on strangers ; but companies or guilds, such as the civic companies of London, having no local power, can only bind the members of their own fraternities.

The constitution of a corporation, as settled by act of parliament, cannot be varied by the acceptance of a charter inconsistent with it, 6 *T. R.* 268.

The queen cannot, by her prerogative, dissolve a corporation.

No member can vote in the general courts, unless he have been six months in possession of the stock necessary to qualify him, except it comes to him by bequest, marriage, succession, or settlement.

The election of officers of corporations and other public companies which falls on a Sunday, must be held on the Saturday next preceding, or the Monday next ensuing, 3 *W. 4*, c. 31.

A corporation may be dissolved—1. By act of parliament. 2. By the natural death of all its members. 3. By surrender of its franchises into the hands of the queen. 4. By forfeiture of its charter through negligence or abuse of its privileges ; in which case the law concludes the conditions upon which it was incorporated are broken, and the grant of incorporation forfeited.

MUNICIPAL or town corporations are now, with the exception

of London, regulated by 5 & 6 W. 4, c. 76, by which all existing laws, usages, grants, and charters are abolished, but reserves to inhabitants, freemen, burgesses, and apprentices, and to the sons, sons-in-law, daughters, wives, and widows of freemen and burgesses, certain interests in charitable funds, and to the latter, the right of voting in parliamentary elections; prohibiting, however, future admissions by gifts or purchase. Under this statute the government of a borough is vested in the freemen or burgesses existing at the passing of the act, Sept. 9, 1835, whose rights are reserved, and the burgesses subsequently enrolled. From the burgesses the mayor, aldermen, and councillors are elected.

To be a *burgess* qualified to vote at municipal elections, 1. He must be of full age. 2. On the last day of August in any year, he must have occupied a house, warehouse, counting-house, or shop in the borough during that year and the whole of each of the *two preceding years*. 3. During the time of occupation he must have been an inhabitant householder in the borough or within seven miles thereof. 4. He must have been duly enrolled, and to be enrolled must have been rated during his time of occupation in respect of the premises occupied to all rates made for the relief of the poor of the parish in which the premises are situated. 5. He must have paid, before the last day of August, all taxes and rates payable for his premises except such as became payable six calendar months before the last day of August. The premises occupied need not be the same premises, nor in the same parish. Aliens and persons who have received parochial relief within the twelve months preceding the last day of August, or any charitable allowance from any fund entrusted to the charitable trustees of the borough, not eligible to be enrolled. *Members of the town-council*, namely, the mayor, aldermen, and councillors, must, in addition to fulfilling the conditions imposed on burgesses, have the following qualifications:—In boroughs divided into four or more wards they must be possessed of real or personal estate to the amount to £1000, or be rated to the relief of the poor upon the annual value of at least £30; and in boroughs, divided into less than four wards, or not divided into wards, be possessed of real or personal estate to the amount of £500, or be rated to the relief of the poor upon the annual value of not less than £15. A burgess is disqualified to be a member of the council if in holy orders, or the regular minister of a dissenting congregation; if holding any office or place of profit, other than that of mayor, in the disposal of the council; or if directly or indirectly by himself or partner having any share or interest in any contract or employment with, by, or on behalf of the council. But 15 V. c. 5, explains that persons who have a share or interest in any newspaper in which advertisements appear relating to the

borough, council, commissioners and trustees, are not to be deemed contractors by reason of such advertisements.

Overseers to make out a list of burgesses by September 5th, which is to be open to inspection without fee until the 15th; town clerk to exhibit burgess list on the outer door of the town-hall or some conspicuous place on every day during the week next preceding the 15th of September; burgesses omitted must give notice on or before the 15th of September. List of claimants and persons objected to, to be published during the eight days preceding October 1st. Mayor and assessors to hold an open court for the revision of the burgess list between the first and fifteenth day of October. Copies of the burgess roll to be printed for sale. Councillors to be chosen November 1st, and one-third part of the council to go out of office annually. Auditors and assessors are to be chosen by the burgesses March 1st, from among the persons qualified to be councillors. Council to elect the mayor and aldermen November 9th from among the councillors. Mayor refusing to serve to forfeit not exceeding £100; aldermen, councillor, auditor, or assessor, £50. Acting as councillor without a due qualification, incurs a penalty of £50.

On the petition of the inhabitant householders of any towns not corporate, the queen is empowered to extend the provisions of this important statute by the grant of charters of incorporation. Manchester, Birmingham, and Bolton have availed themselves of this clause, and obtained charters; adding three to the 178 boroughs to which the act originally extended.

The statute abolishes all exclusive rights of trading and occupation in municipal towns.

Borough constables elected under the act are disqualified from voting in the election of persons to municipal offices, or for member of parliament, by 19 & 20 V. c. 69, s. 9. Penalty £10, or for attempting to influence an elector.

By 5 & 6 V. c. 104, no member of council can vote or take part in the discussion of any matter before the council, in which he or his partner has any particular interest; but not disqualified by having an interest in lease of lands.

The 6 & 7 V. c. 89, enacts that no election of mayor, alderman, or councillor can be called in question for defect of title, unless by *quo warranto*, within twelve months from the election.

The 12 & 13 V. c. 82, relieves municipal boroughs in specified cases, from contribution to certain descriptions of county expenditure.

The 14 & 15 V. c. 39, provides, the burgesses and freemen whose franchises were reserved under the Reform Act, shall not be affected by the change in rating small tenements under 13 & 14 V. c. 99. See p. 117.

The acts applying to corporations, specified in the schedule of 6 & 7 W. 4, c. 76, are extended by 16 & 17 V. c. 79, to corporations erected subsequent to the passing of that act. By s. 5, boroughs appointing inspectors of weights and measures are not to be liable to contribute to the county rate in respect of weights and measures. By s. 6, town councillors are no longer exempted or disqualified from serving on the grand jury of the quarter sessions for the borough, so far as respects boroughs not containing 12,000 inhabitants according to the last census. The mayor of every city, borough, or town corporate may appoint for deputy an alderman or councillor to act for him during illness or absence, s. 7.

## CHAPTER VI.

### *Joint-Stock Companies.*

THE subject of this chapter is important from its commercial bearings, and the numerous companies connected with railways, and other public works and speculative enterprises. Its legal import will be best comprehended, by first defining the attributes of a joint-stock company, and its relations to a common partnership; and next, by considering the duties imposed upon joint-stock companies, and the regulations to which they have been subjected by late acts of parliament, especially the act of 1856, the 19 & 20 V. c. 47, for the incorporation and regulation of joint-stock associations. The act, however, does not apply to companies associated for the purpose of banking or assurance, which continue to be regulated, the first, by 7 & 8 V. c. 113, and the last by 7 & 8 V. c. 110. But trading joint-stock companies, composed of more than twenty members, must be established under the new act, and other joint-stock companies composed of seven or more associates may avail themselves of the act of 1856, and become incorporated for any lawful purpose.

Generally a joint-stock company may be defined to be an association trading upon a joint stock, divided into transferable shares, each member sharing in the common profit or loss, in proportion to his shares in the joint stock.

Joint-stock companies, established by one or more of these means, namely, by charter, act of parliament, or registration, differ in several respects from private partnerships.

*First*, in a private partnership, no partner, without the consent of the firm, can transfer his share to another person, or introduce a new member into the partnership. Each member, however, may, upon proper warning, withdraw from the firm, and demand payment from them of his common stock. In a joint-stock-company, on the contrary, no member can demand



payment of his share from the company; but each member can, without their consent, transfer his share to another person, and thereby introduce a new member.

*Secondly*, in a private partnership each partner is bound for the debts contracted by the partnership, to the whole extent of his fortune. In a joint-stock company, on the contrary, each partner is bound only to the extent of his share, unless a general liability is created by the charter or act of incorporation.

*Lastly*, the business of a joint-stock company is mostly managed by a board of directors, subject, in many respects, to the control of a general court of proprietors. The Bank of England, the Royal Assurance, and the East India Company, are examples of such joint-stock associations.

The laws respecting companies not established under the Joint-Stock Companies Act, but only associated by mutual agreement, declared by a deed of trust and arrangement, are generally the same as in common partnerships. In these associations, each subscriber is a partner, liable for all the contracts of the company. But the articles of agreement and mode of managing unincorporated companies are usually different from common partnerships. The capital is generally divided into shares, whereof each party may hold one or more, but restricted to a certain number. Any partner can transfer his share, under certain limitations; but no partner can act personally in the affairs of the company, the general management being entrusted to officers, for whom the whole company are responsible. But unincorporated companies or partnerships in trade or business for gain, if more than twenty persons, are required by the act of last session to be registered as a company.

By obtaining a charter, a company acquire the right to purchase lands, to make by-laws, to have a common seal, to sue and be sued in a corporate capacity, and exercise other privileges of a corporation. Sometimes a charter is procured to limit the risk of the partners; and if any exclusive privilege is desired, which a charter cannot grant, an act of parliament is necessary.

If a company be incorporated, its powers and franchises, and the liability of individual members, are prescribed by the statute or charter of incorporation, or the regulations of the subjoined Joint-Stock Act.

If a company be *not* incorporated, it stands, as before remarked, on the footing of a common partnership; the articles of agreement may limit the powers of the members towards each other, but not their responsibility against the claims of a third party. Each member is liable for the whole amount of the company's debts, bound for their payment, and responsible, as such, to the bankrupt laws as a trader. In short, in every

particular, except in the transferring of his interest in the joint-stock to a stranger, a member of an unincorporated company is surrounded with the same rights and responsibilities as he would be in an ordinary partnership.

Another point in respect of unincorporated share companies it is material to impress. A person, by becoming a subscriber to such companies, is legally disqualified from recovering for work done on account of such associations; nor can he recover on any bill or note accepted by the director or secretaries of such associations: the acceptance of shares renders him a *partner* in the undertaking, and consequently cuts off his right of action against the firm into which he has entered.

The powers sometimes exercised by unincorporated and even unregistered companies of advertising for subscriptions and creating transferable shares were always illegal at common law, and still continue such, subjecting the parties engaged in them, in addition to the ordinary liabilities of partnership and the penalties of the statute, to be indicted for nuisances, in pretending to act as corporations. But the Legislature, with the view of facilitating laudable undertakings by joint stock, has vested in the crown powers by which the necessity of an act of parliament in certain cases may be obviated. By 1 V. c. 73, the queen is empowered to grant, by letters patent, to persons associated for trading and other purposes, many of the privileges of a charter of incorporation, by limiting the liability of the patentees, and enabling their secretary or other officer to prosecute or defend in the name of the association; they may even sue one of their own members. Letters patent under the statute are equivalent to a private act, except when compulsory powers to take land, &c., are requisite.

## II. JOINT-STOCK COMPANIES ACT, 1856.

The application of this act, the 19 & 20 V. c. 47, has been partly explained; it repeals former acts, consolidates and amends their provisions, and is the regulating statute of trading companies for the purpose of gain. By s. 3, any seven or more persons, associated for any lawful purpose, may, by subscribing their names to a Memorandum of Association, and otherwise complying with the provisions of the act in respect of registration, form themselves into an incorporated company, with or without limited liability.

Not more than twenty persons after November 3, 1856, to carry on in partnership any trade or business having gain for its object, unless they are registered as a company under this act, or are authorized so to carry on business by some private act of parliament, or by royal charter or letters patent, or are engaged in working mines within, and subject to the jurisdiction of, the Stannaries; and if any persons carry on business

in partnership contrary to this provision, every person so acting is liable for the payment of the whole debts of the partnership, and may be sued for the same.

The Memorandum of Association to contain the name of the proposed company, and of the place where the registered office of the company is established; the objects for which the proposed company is to be established; the liability of the shareholders, whether it is to be *limited* or *unlimited*; the amount of the nominal capital of the proposed company; the number of shares into which such capital is to be divided, and the amount of each share: subject to the following restriction—that in the case of a company formed with limited liability, and called a Limited Company, the word “Limited” to be the last word in the name of the company. A form of the memorandum is given in the act.

By s. 6, no company to be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive. Every subscriber of the memorandum to take one share at the least in the company; the number of shares taken to be set opposite his name, and, upon the incorporation of the company, be entered in the register of shareholders. Special regulations may be prescribed by the articles of association. The articles of association to be in a prescribed form, and bind the shareholders. Memorandum and Articles of Association to be registered with the Registrar of Joint-Stock Companies, who grants a certificate by which the company becomes a corporate body, ss. 7–13.

By s. 14, if the directors of such company pay a dividend when the company is known to be insolvent, or a dividend the payment of which would to their knowledge render it insolvent, they are jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, so long as they continue in office; but the amount for which they are liable not to exceed the amount of such dividend; and if any of the directors be absent at the time of making the dividend, or object thereto, and file their objections in writing with the clerk of the company, they are exempt from liability. A register of shareholders to be kept; penalty £5 per day for neglect. A transfer of shares to be made by entry in the register book, and the certificate of shares evidence of title in the holder. Calls unpaid become a debt due to the company. Copies of memorandum and articles to be given to shareholders, ss. 14–23.

For the *Management* and *Administration* of the company a registered office must be kept, under a penalty of £5 per day for omission. Notice to be given to registrar of any change of situation. Every limited company to have its name affixed

outside its office of business, in legible characters, and engraven on its seal, under a like penalty for omission. A general meeting of the company to be held at least once in every year. Any company registered under the act may, in general meeting, alter its regulations by special resolution, and three-fourths in number and value of shareholders are competent to pass a special resolution. Copy of special resolution to be forwarded to registrar under penalty for neglect. Notice must be given to registrar of increase of capital. Prohibition against holding above two acres of land without leave of the Board of Trade, s. 37. Prohibition against carrying on business with less than seven shareholders. Facilities conceded for making contracts under the common seal of the company; for the execution of deeds abroad, and the acceptance or endorsement of notes and bills of exchange.

By s. 48, upon the application of one-fifth in number and value of the shareholders, the Board of Trade may appoint inspectors to examine into the affairs of the company. Inspectors may examine upon oath the officers and agents of the company in relation to its business. Refusing to answer questions, or to produce any book or document, subjects to a penalty of £5 for each offence. Report of inspection to be made to the Board of Trade, and forwarded to the registrar, and copies delivered, if requested, to the shareholders who prompted the inquiry, the expenses of which are to be defrayed by them. Inspectors, with like powers and duties, may be appointed at a general meeting of the company. Penalties recoverable before two or more justices of the peace.

The provisions relating to the *Winding up of Companies* apply to all companies registered under the act; and to all companies registered under the 7 & 8 V. c. 110, from and after the date at which they have obtained registration under the new act. In the event of any company being wound up by the Court of Bankruptcy or voluntarily, the existing shareholders shall be liable to contribute to the assets of the company to an amount sufficient to pay the debts of the company, and the costs, charges, and expenses of winding up the same, with this qualification, that if the company is *limited* no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him, s. 61.

In the event of any company other than a *limited company* being wound up by the court or voluntarily, any person who has ceased to be a shareholder within the period of three years prior to the commencement of the winding up shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs and expenses of winding up the same, to be an existing shareholder, and shall have in all respects the same rights, and be subject to the same liabilities

to creditors, as if he had not so ceased to be a shareholder, with this exception, that he shall not be liable in respect of any debt of the company contracted after the time at which he ceased to be a shareholder, s. 62.

In the event of any limited company being wound up by the court, or voluntarily, any person who has ceased to be a holder of any share within the period of one year prior to the commencement of the winding up shall be deemed, for the purposes of contribution towards payment of the debts of the company, and the costs and expenses of winding up, to be an existing holder of such share or shares, and shall have in all respects the same rights, and be subject to the same liabilities to creditors, as if he had not so ceased to be a shareholder, s. 63.

The winding up shall, if the company is wound up by the court, be deemed to commence at the time of the presentation of the petition to the court, and if the company is wound up voluntarily, be deemed to commence at the time of the passing of the resolution authorizing such winding up, s. 64.

Any existing or former shareholder upon whom calls are authorized to be made, to be called "a contributory," and the representatives of any deceased contributory are liable in a due course of administration to the same extent as such contributory would be liable, if alive.

For the purpose of ascertaining the liability of existing and former shareholders as between themselves, the following rule to be adopted:—1. In the case of a company other than a limited company every transferee of shares shall, in a degree proportioned to the shares transferred, indemnify the transferrer against all existing and future debts of the company; 2. In the case of a limited company, every transferee shall indemnify the transferrer against all calls made or accrued due on the shares transferred subsequently to the transfer, s. 66.

A company may be wound up by the court under the following circumstances:—1. When the company in general meeting has passed a special resolution requiring the company to be wound up by the court; 2. When the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; 3. When the shareholders are reduced in number to less than seven; 4. When the company is unable to pay its debts; 5. When three-fourths of the capital of the company have been lost or become unavailable, s. 67.

By s. 68 a company is deemed insolvent if unable to pay a debt on demand of £50; or to satisfy, in whole or part, an execution issued against it.

By s. 69, any application for the winding up of a company shall be by petition, and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the

same : such petition may, in cases where the company is unable to pay its debts, be presented by a creditor or a contributory, but where any other ground is alleged for winding up the company, a contributory alone is entitled to present the petition.

Sections 70 to 87 relate to the hearing of the petition by the court and proceedings thereon, and to the power of the court of chancery to remit the winding up of a company to the court of bankruptcy having jurisdiction in the place where the registered office of the company is situated. By s. 88, for the purpose of conducting the proceedings in winding up a company, and assisting the court therein, there shall be appointed a person to be called an *official liquidator*, who shall take into his custody all the property, effects, and things in action of the company, and be paid such salary by way of percentage as the court shall direct. When the affairs of the company have been completely wound up, the court to make an order, or decree, declaring the company dissolved from the date thereof.

By s. 76, a petition for winding up a company is made to correspond to a petition for adjudication in bankruptcy, and any undue or fraudulent preference, by conveyance, mortgage, delivery of goods, payment, or execution, is invalid. After an order has been made, the court may summon persons before it suspected of having property of the company, and require them to produce books or documents, or make disclosures. Court may examine upon oath by word of mouth or written interrogatories, ss. 77, 78.

By s. 79, if any director, officer, or contributory of any company, for the winding up of which an order has been made, destroys, mutilates, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud the creditors or contributories of such company, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted be liable to imprisonment for any term not exceeding two years, with or without hard labour.

By s. 102, a company may be wound up voluntarily ; 1. When the period, if any, fixed for the duration of the company by the articles of association expires, or when the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved ; 2. When the company in general meeting has passed a special resolution requiring the company to be wound up voluntarily. When a company is wound up voluntarily, the company, from the date of the commencement of such winding up, to cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, but its corporate state to continue until the affairs of the company are wound up. The

property of the company to be applied in satisfaction of its liabilities, and, subject thereto, shall, unless it be otherwise provided by the articles of association, be distributed amongst the shareholders in proportion to their shares. Liquidators to be appointed for the purpose of winding up the affairs of the company and distributing the property.

The voluntary winding up of a company not to prejudice the right of any creditor of such company to institute proceedings for the purpose of having the same wound up by the court, s. 105.

*Registration Office.*—By s. 106, the Board of Trade may from time to time appoint such registrars, assistant registrars, clerks, and servants, as they may think necessary for the registration of companies under the act, and remove them at pleasure. The Board also to determine the places at which registration offices shall be established; so that at least one shall be maintained in each of the three parts of the United Kingdom; and no company is to be registered except at an office in that part of the United Kingdom in which, by the memorandum of association, the registered office of the company is declared to be established. The documents kept by the registrar to be open to inspection on the payment of a fee not exceeding 1s.

*Repeal of Acts.*—The former acts relative to joint-stock companies repealed are the 7 & 8 V. c. 110; the 10 & 11 V. c. 78; and the Limited Liability Act of 1855, the 18 & 19 V. c. 133. But such repeal not to take effect with respect to any company completely registered under the 7 & 8 V. c. 110, until such company has obtained registration under the new act. Former winding-up acts are repealed in respect of companies who may be registered under the act of 1856. But the repeal does not extend to anything done, or liabilities incurred within the repealed acts.

*Existing Companies.*—Temporary provision is made for the registration of existing companies. By s. 110, every company, completely registered under the 7 & 8 V. c. 110, shall, on or before November 3, 1856, and any other company duly constituted by law previously to the passing of the act, and consisting of seven or more shareholders, may at any time, register itself as a company under the act, with or without limited liability, subject to this proviso, that no company shall be registered as a limited company unless either a certificate of complete registration with limited liability under the Limited Liability Act, 1855, has been obtained by it, or an assent to its being so registered has been given by three-fourths in number and value of such of its shareholders as may have been present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for that purpose.

Any existing company may, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited," or do any other act that may be necessary. The certificate of incorporation given to any existing company, to be conclusive evidence that all the requisitions in respect of registration under the act have been complied with, and the date of such certificate to be deemed to be the date at which the company is incorporated under the new act, ss. 114, 115.

A saving clause is added, protecting the rights of creditors of companies registering under the new act. A schedule is subjoined of forms, of regulations for the management of companies, and of fees payable on registration.

JOINT-STOCK BANKS.—The provision of 7 & 8 V. c. 113, which required the deed of partnership of every banking company established under that act to provide that one-fourth of the directors should retire yearly, and not be eligible for re-election for twelve calendar months, is partly repealed by 19 & 20 V. c. 100. By s. 1. no clause need be inserted in the partnership deed to prevent the re-election, and retiring directors are eligible to immediate re-election, and this extends to banking firms already established.

## CHAPTER VII.

### *Partners.*

PARTNERSHIPS are mercantile associations, in which two or more persons agree to share equally, or in any other proportion, the profit and loss in any trade, bargain, or speculation. The object of the partnership agreement may be anything that is lawful; since any agreement for an unlawful object is no agreement. To constitute a partnership, and to make a person liable as a partner, there must be an agreement between him and his colleagues to share in all risk of profit and loss; or he must have permitted them to use his credit, and to *hold him out* as jointly liable with themselves. In general all the partners appear ostensibly to the world, constituting what is called the *house* or *firm*; but moneyed men sometimes embark considerable sums in trade without taking any part in the management of the business or suffering their names to appear: such persons are called *dormant* or *sleeping* partners.

Though an agreement to share profit and loss is essential to constitute partnership, yet, if one take a moiety of the profits without limit, he shall, by operation of law, be made liable to losses, 2 H. B. 247.

An agent who is paid by a proportion of the profits of an adventure does not thereby become a partner in the property,



though it may render him liable as a partner to third persons, 2 B. & C. 401.

A number of persons agreeing to subscribe sums of money for the purpose of obtaining a bill in parliament to make a canal or railway are partners in the undertaking: and, therefore, a subscriber who acted as their surveyor could not maintain an action for work done by him in that character, on account of the partnership, against all or any of the other subscribers, 1 B. & C. 74.

If there is no express stipulation as to the management of partnership property, the majority must decide as to the disposition and management of partnership concerns.

Each partner is not only entitled to his proportion of the partnership estate, according to express agreement, or what he originally contributed, but he has a lien upon it for any sum of money advanced by him to, or owing to him from, the partnership.

A written agreement is not necessary to constitute a partnership. The acts of the parties, where there is no partnership contract in writing, are the evidence of the contract.

## II. LIABILITIES OF PARTNERS.

In all partnerships, the individual partners are liable for the debts of the joint trade without limitation, unless when incorporated; and then the members are liable for their respective shares; or, according to 1 V. c. 73, in such other degree as the charter of incorporation may prescribe.

In general, it may be stated that the acts of one partner, in the way of sale, purchase, promise, or agreement, when performed without collusion, and in violation of no public law, and in course of the partnership business, are binding on the whole firm. And this responsibility of partners for the acts of each other in the course of trade, cannot be limited by any agreement, covenant, or promise in the articles by which the partnership is constituted.

This principle is, however, subject to some qualification. If one partner can show a *disclaimer*, he will be relieved from responsibility. Or, if there be any particular speculation which he disapproves of, by giving distinct notice to those with whom his partners are about to contract, that he will not, in any manner, be concerned in it, they cannot have any claim upon him, as proof of the notice would rebut his *prima facie* liability. Neither is there any joint liability for the debt of one partner, unless contracted in the course of the partnership concern. So, if the partnership effects are taken, and sold on an execution against one partner only, the sheriff is to pay over to the other partners a share of the produce proportioned to their shares in the partnership effects.

Though a small share in the business renders the shareholder a general partner, and subjects him to the same responsibility as if he held a more considerable share, yet a share in a ship, the copyright of a book, or other *specific object*, does not constitute a general partnership; and, therefore, the responsibility is limited to that particular object.

Dormant or *sleeping* partners are liable, when discovered, to the partnership debts. But it would seem that a sleeping partner is not responsible for any bill of exchange accepted by the acting partners in their names, unless such bill relate to the business of the partnership; because the sleeping partner had neither privity nor interest in the bill, not being accepted in a partnership transaction, nor was the bill taken on his credit, as he was not known to be a partner, 2 *Car. & Pay.* 188.

The acts of one partner, in drawing bills of exchange, endorsing such as are payable to the firm, and making and endorsing promissory notes, when they concern the joint trade, bind the firm. But it is otherwise if they concern the acceptor only in a disjoint interest.

A partner, as such, cannot bind his co-partner by deed without express or implied authority, 7 *T. R.* 476.

One partner may maintain an action for money received against the other partner, for money received to the separate use of the former, and wrongfully carried to the partnership account, *Smith v. Barrow*, 2 *T. R.* 207.

An entire firm may become bankrupt, or some or one only of the partners may become so whilst the remaining members continue solvent. Upon the bankruptcy of one partner under a separate fiat issued against him, his assignees take all his separate property, and all his interest in the partnership property; and if a joint fiat issue against all, the assignees take all the joint property and all the separate property of each individual partner.

### III. DISSOLUTION OF PARTNERSHIP.

By the death of one partner the partnership is dissolved, unless there is an express agreement for the transmission of an interest in the business to the deceased partner's family, or for the continuation of it by his executor or administrator.

Bankruptcy, outlawry, or attain for treason or felony, constitutes a dissolution of partnership.

Where the partnership is *special*, or formed for a single dealing or transaction, as soon as that is completed the partnership is at an end of course. But where a general partnership is entered into for an unlimited time, it may be put an end to at any time by either of the parties, so that he does not break off with some sinister view.

A partnership may be dissolved by the expiration of the

time for which it was constituted, by award of arbitrators, by the insanity of one of the firm, or by the gross misconduct of a partner which will induce a court of equity to annul the contract.

An advertisement in the *London Gazette* is not sufficient announcement of the dissolution of partnership; notice ought to be sent to all persons with whom the firm had dealings while in partnership.

If a partner, when he retires, draw out of the partnership stock all that he had paid in, the house being insolvent at the time, he will be obliged to refund to the creditors of the other partner.

## CHAPTER VIII.

### *Trustees.*

TRUST is a power vested in a person to manage the property or interest of another, and the duties of the trustee are prescribed by the deed, will, settlement, or conveyance by which the trust is created. For breach of trust the remedy is by bill in Chancery, the common law generally taking no cognizance of trust.

Debtors sometimes execute an assignment to trustees of the whole or part of their property, for the benefit of creditors. Such trusts can extend only to debts actually owing at the time of executing the deed: and though the assignment may purport to be only for such creditors as agree to execute it within the year, yet it is competent to any creditor to come in, even after the year, provided his debt existed at the time of making the deed: but after the expiration of a year, it would seem, creditors may be compelled either to come in, or renounce all benefit from the trust, 1 *Vernon*, 260. Where personal property is bequeathed to executors, the probate of the will is an acceptance of the trust.

A trustee not having the whole power, and being obliged to join in receipts, is not chargeable for money received by the other; but where they join in a receipt, and it cannot be distinguished what was received by one, and what by the other, they shall both be charged with the whole. Also, if a trustee be privy to the embezzlement of the trust-fund by his associate he shall be charged with the amount.

Trustees are accountable for the interest which they either do or might make from the employment of the money in their possession. They are also accountable for the whole profits they may derive from trading with the trust-fund.

As their office is considered purely honorary, they are not en-

titled to any allowance for their trouble in the trust, but they will be paid their costs in case of an unfounded suit against them. Equity, also, will occasionally allow remuneration for the management of the trust-fund, where the services of the trustee have been very beneficial, or the duties onerous, as in collecting weekly rents.

Courts of equity will cause trustees, upon their application, to be relieved, if upon inquiry it be found that they have done nothing to render them liable at a future period; and acts of parliament have provided for the conveyance or assignment of trust-estates when the trustees have become bankrupt, insolvent, or of unsound mind, or when they are out of the jurisdiction of equity.

By 10 & 11 V. c. 96, means are provided for securing trust moneys, and for relieving trustees from the responsibility of administering trust-funds in cases where they are desirous of being so relieved. Trustees may pay trust moneys or transfer stock and securities into the Court of Chancery, and the receipt of the Bank cashier, or the certificate of the proper officer, is to be a sufficient discharge to the trustees. The Court of Chancery may make orders on petition, without bill, for the application of trust moneys so paid, and for the administration of the trusts generally to which the moneys related. It is further provided that the Lord Chancellor, with the assistance of the Master of the Rolls, or one of the Vice-Chancellors, shall have power to make such orders as from time to time shall seem necessary for better carrying the provisions of this act into effect.

To remove certain difficulties under this act, the 12 & 13 V. c. 74, enacts that the Court of Chancery may, upon application by a majority of trustees or executors, order payment or transfer of trust moneys, stock, or securities, into the court.

By 13 & 14 V. c. 60, the laws relating to the conveyance and transfer of property vested in mortgagees and trustees are consolidated and amended.

The estates of trustees deceased, who have not acted in conformity with the trust, are liable for the consequences.

Trustees are controlled by the same principle as assignees in bankruptcy; for they are in no case permitted to purchase from themselves the trust estate, 1 *Vern.* 465, 2 *Atk.* 59; nor their solicitor, 3 *Mer.* 200.

## CHAPTER IX.

### *Executors and Administrators.*

AN executor is he to whom a man commits the execution of his last will and testament. If the testator make an incomplete will, without naming executors, or if he name incapable persons,

or if the executors named refuse to act; in any of these cases the ordinary must grant administration to some person, and the duties of the administrator so appointed nearly coincide with those of an executor.

When a person dies *intestate*, the ordinary is compellable to grant administration to the next of kin. For example, of the goods of the wife to the husband, and of the husband's effects to the widow or next of kin, or to both, at his discretion.

If a BASTARD die *intestate*, without wife or children, or if any other person die without kindred, the queen is entitled to the *personal* property as administrator; but, in case of a bastard, it is now usual for the crown to grant administration to some relation of the bastard's father or mother, reserving a tenth part, or some small portion, as a recognition of its rights. The *real* estate falls to the lord of the fee, or the queen, subject to the wife's right of dower and incumbrances, and it is customary to dispose of it in the same way.

An executor may be appointed either by express words, or by words that amount to a direct appointment; but, though a person is appointed executor, he is not bound to act, unless he has performed the offices which are proper for an executor, as by paying debts due from the testator, or receiving any debts due to him, or giving acquittances, &c.

If there are many executors of a will, and only one of them prove the will, and take upon him the executorship, it is sufficient for them all; and even, after the death of the acting executor, the right of executorship survives to them; but if two executors are appointed by will, and one of them prove the will, in the name of both, without the consent of the other, this will not bind him who refused the executorship, unless he administers.

If executors waste the goods of the testator, the Court of Chancery will, on the application of creditors, appoint a receiver of the testator's effects, in order to protect them. Or, if they retain money in their hands, they are chargeable with interest and costs, if any have been incurred; but they are not liable for the property of the deceased, unless it has been lost through wilful negligence, or without taking reasonable care to prevent such defalcation. Neither is one executor answerable for money received or detriment occasioned by his co-executor, unless it has been by means of some joint act done by them.

If a creditor make his debtor executor, it is an extinguishment of the debt; for an executor cannot sue himself; but still, in equity, the executor's debt is assets with respect to the creditors, if the residue of the testator's estate is not sufficient; because it is extinguished, not by way of *release*, but in the way of *legacy*.

The property of a deceased person vests in his executor from

the time of his death; in an administrator, from the time of the grant of letters of administration.

## II. DUTIES OF EXECUTORS.

The first thing to be done is to bury the deceased in a manner suitable to his rank in life and the estate he has left behind him. In strictness, no funeral expenses are allowed against a creditor except for the coffin, tolling the bell, parson, clerk, and bearers' fees, but not for the pall or ornaments. But if there are *assets sufficient*, the allowance is regulated by the rank and property of the deceased.

The next duty of the executor is to *prove the will*, which is done upon oath before the ordinary or his surrogate; or, in a more solemn form, with the additional oath of one or two witnesses, in case the validity of the will be disputed. This must be done within six months after the death of the testator, under a penalty of £50, by 37 G. 3, c. 90. After proving the will, the original must be deposited in the registry of the ordinary, and a copy is made upon parchment, under the seal of the ordinary, and delivered to the executor or administrator, together with a certificate of its having been so proved before him: this is called the *probate*.

After obtaining probate, an inventory must be made of all the goods and chattels, whether in possession or action of the deceased, which, if required, must be delivered to the ordinary upon oath, in the presence of two credible witnesses, and to which, if so delivered, no creditor is at liberty to object.

## III. DISPOSITION OF THE ASSETS.

All the debts and effects of the deceased collected in, become assets in the hands of the executor, chargeable to creditors, legatees, and kindred of the deceased, and payable in the following order:—

1. The executor must pay all funeral charges, the expenses of proving the will, and other necessary outgoings incurred in the execution of the trust.
2. He must pay all debts due to the queen.
3. Such debts as are due by particular statutes; as money due for poor-rates, for post-office letters, or to a friendly society.
4. Debts of record on judgment of courts of law, and debts due on mortgage.
5. Debts due on special contract, as for rent in arrear, and debts due on bond or covenant under seal.
6. Debts on simple contract, as promissory notes, bills of exchange, or verbal promises.

Among simple contract debts, wages due to servants must be first paid. And, lastly, legacies must be paid.

If an executor pay debts of a *lower* degree first, and should there be a deficiency of assets, he is bound to answer those of a higher nature out of his own estate.

But, it is to be observed that the payment of debts, according to **PRIORITY**, applies only to personal or *legal assets*; when the testator leaves his real estate for the payment of his debts, these are called *equitable assets*, because a court of equity will order all the creditors to be paid an equal share out of this fund. And even when specialty creditors have received part of their debts out of the personal estate, a court of equity will restrain them from receiving any part of the equitable fund till all the other creditors are paid an equal proportion of their debts.

With respect to the disposition of the *residue of testators*, it has been provided by 1 W. 4, c. 40, that executors, unless otherwise appointed in the will, shall only be deemed *trustees* of the undisposed residue for the benefit of such as would be entitled, under the Statute of Distributions, if the testator had died without a will. But this is not to prejudice the rights of executors to the residue, when there is not any person entitled to claim under the Statute of Distributions.

By 3 & 4 W. 4, c. 42, executors may bring actions for injuries committed to the *real* estate of the deceased during his life, and the contrary, against executors for injuries to property, real or personal, by the testator. Executors suing in right of testator have been made liable to *costs* in case of nonsuit or verdict passing against them.

For new procedure in administration suits, see p. 56.

## CHAPTER X.

### *Husband and Wife.*

**MARRIAGE** is a civil contract, in which the wife partly loses her legal individuality, and becomes incorporated with, and subordinate to, her husband. Upon this principle, a man cannot grant anything to his wife without the intervention of trustees, or enter into covenant with her: for the grant would be to suppose her separate existence, and to covenant with her would be to covenant with himself.

The sanctity of the marriage contract is only considered in the ecclesiastical courts. The courts of law and equity view unlawful or incestuous marriages only as immoralities, excepting the case of bigamy, which, though it be a matter of ecclesiastical jurisdiction as respects the annulling of the marriage, is, by the statute law, classed as a crime of which the law takes cognizance.

For the validity of marriage are requisite:—1. The mutual consent of the parties. 2. The absence of all legal disability, arising out of previous marriage, relationship, or corporal infirmity: but corporal infirmity *after* marriage will not vacate

the marriage, because there was no *fraud* in the original contract; and one of the ends of marriage, namely, the legitimate procreation of children, may have been answered, 3. The marriage rite must be solemnized, as prescribed by the Marriage Act, between persons of sound mind, and of the age of twenty-one years, or, with the consent of parents, of the age of fourteen in males, and twelve in females. If persons under age marry, either party is at liberty to complete the marriage or not, when they attain maturity. But if a person of *full age* enter into the marriage contract with a minor, the former is bound, though the latter is not.

Fraud will sometimes be a ground for annulling a marriage; as on account of bans having been published, or licence obtained, under *false names*; but unless the name was assumed for the purpose of *defrauding* the other party, or the parents, the circumstance of the marriage being in a fictitious name will not invalidate it. Error about the family or fortune of the individual, though produced by unfair representations, will not at all affect the validity of a marriage, 1 *Phil. E. C.* 137. And the wife gains her husband's settlement, though the marriage is brought about by fraud on the part of the parish officers, 8 *B. & C.* 29.

Marriages may be dissolved by death or by divorce.

Divorces may be either *absolute* or *qualified*: the first arising from some of the legal disabilities already mentioned, which, rendering the marriage void from the beginning, enables the party to marry again, and destroys the liability of the husband for the wife's debts; the second, from causes which make it improper or impossible for the parties to live together, as intolerable *ill temper* or *adultery*, in either of the parties. But it seems doubtful whether *ill temper* alone is an adequate cause of divorce: the policy of the law is to consider marriage indissoluble, and courts are slow to interfere, except when something arises which renders cohabitation unsafe, or likely to be attended with injury to the person or to the health of the party applying, *Haggard's Rep.* 36. And even adultery by the wife is not sufficient to obtain separation if the husband also be guilty, *Astley v. Astley*.

In the case of a *qualified* divorce, the law allows ALIMONY, or maintenance to the wife, which is settled at the discretion of the judge, according to the circumstances of the case. It is usually proportioned to the rank and quality of the parties. But in case of elopement, and living in adultery, the law allows no alimony.

## II. POWERS OF THE HUSBAND.

All the *personal* property, as money, goods, and household furniture, that was the property of the wife at the time of mar-



riage, becomes vested in the husband, and placed at his absolute disposal. But of *real* property, the freehold and inheritance of the wife, the husband can only receive the profits during her life. The law gives the like limited power over any real estate accruing to the wife during coverture.

A married woman has no authority to make a contract without the authority or assent of her husband, express or implied. If a wife sell or dispose of the goods of the husband, the sale is void; or if she buy goods without his consent, he is not chargeable with them. So also, a note or bill drawn or indorsed by a married woman is void.

A husband may restrain his wife of her liberty in case of gross misbehaviour; but in case of unreasonable or improper confinement, the law will relieve the wife by *habeas corpus*.

If the wife be injured in her person or property, she can bring no action for redress, without the concurrence of her husband; neither can she be sued without making the husband defendant. An exception to the rule is, when the husband has been transported or banished; for then he is dead in law.

By 16 & 17 V. c. 83, husbands and wives are made admissible witnesses in any judicial issue or inquiry; but this does not extend to criminal trials (see *Evidence*).

In treason the wife is admitted as witness for the crown against the husband; so, also in an indictment for forcible abduction and marriage; and in bigamy, though the first wife cannot be witness, the second may, the second marriage being void.

In bankruptcy, also, by 6 G. 4, c. 16, s. 37, the commissioners are empowered to examine the bankrupt's wife, touching the discovery of estate and property of the husband.

Where, too, the husband has allowed the wife to act as agent in the management of his affairs, or in any particular business, the representations and admissions of the wife, in the course of such agency, are admissible in evidence against the husband.

Thus, in an action against the husband for board and lodging, where it appeared the bargain for the apartments had been made by the wife, and that, on a demand being made for the rent, she acknowledged the debt, the plaintiff was held entitled to recover, 1 *Esp.* 142. So, also, the admission of the wife, as to an agreement for suckling a child, was allowed to be evidence against the husband, *Str.* 527.

### III. DEBTS BEFORE MARRIAGE.

If the wife be indebted *before* marriage, the husband is liable to such debts, and *both* may be sued for them during coverture; but if these debts be not recovered against the husband and wife, in the lifetime of the wife, the husband cannot be charged with them after her death, unless there be some part of he

personal property which he did not bring into his possession before her death, to the extent of which he will be liable to pay his wife's debts. If the wife survive the husband, an action will lie against her for her debts before marriage.

#### IV. LIABILITY FOR MAINTENANCE.

A husband is bound to maintain his wife in *necessaries* according to his rank and estate; and if she contracts debts for them, he is answerable. But if the wife voluntarily leave her husband, without sufficient cause, and without his consent, he is not bound, on giving notice to a tradesman of his dissent to her absence. And with respect to the *necessaries* for which the husband is liable, they must be really such; for example, they must not be superfluous dresses, which the wife has no occasion for, nor articles of jewellery, unsuited to the condition, rank, and income of the husband, 3 *B. & C.* 631. Though the wife is lewd, if she *cohabit with her husband* he is chargeable for necessaries; and so he is if he desert her, or turn her away without reasonable cause, or compel her by ill treatment to leave him, although he advertise her, and caution all persons not to trust her, or give particular notice to individuals not to give her credit, still he will be liable for necessaries furnished to her.

But if the wife *elope* from her husband, and live in adultery, the husband cannot be charged by her contracts. And, although the husband was the aggressor, by living in adultery with another woman, and although he turned his wife out of doors, when there was not any imputation on her conduct, yet if she *afterwards commit adultery*, he is not bound to receive or support her after that time; nor is he liable for necessaries which may be provided for her after that time, 6 *T. R.* 603. Neither, when the husband turns his wife out of doors, on account of her having committed adultery under his roof, is he liable for necessaries furnished after her expulsion. Yet, if he receive her again, his liability revives, and attaches upon contracts made by her after the reconciliation, 11 *Ves.* 536; 6 *Mod.* 172.

If a woman *elope* from her husband, though not in an adulterous manner, the husband is not bound.

The husband is liable to pay the wages of a servant hired by the wife, after the servant had performed the service with the knowledge of the husband, 1 *Esp.* 200.

In *Williams v. Fowler*, the plaintiff, the attorney of the wife, obtained his costs in a suit instituted against the husband on account of the wife, 1 *McClel. & Yo.* 269. When there is a separation by consent, and the wife has a separate allowance, those who trust her, *knowing* of such separation and maintenance, do it upon her own credit. But a prohibition in general by putting her in the newspaper is no legal notice not

to trust her; the knowledge of the separation and maintenance must be *brought home* to the tradesmen with whom the wife deals.

Where credit has been given to the wife of a man who has abjured the realm, or is transported, she alone is liable, 1 *T. R.* 8, 9. But by no agreement between a man and his wife for separation and maintenance can she be made legally responsible for the contracts she may enter into, or be liable to the actions of those who may have trusted to her engagements as if she were a single woman, *Marshall v. Rutton*, *T. R.* 545.

An action for *crim. con.* cannot be brought for adultery after a separation between husband and wife, *Weedon v. Timbrell*.

It appears a wife is justified in leaving her husband, where she has *reasonable* ground to apprehend personal violence, without waiting until *actually committed*; and in this case the husband is liable for necessities furnished during her separation, *Houlston v. Smith*, 3 Bing. 127.

If a man cohabit with a woman, and permit her to assume his name, and appear to the world as his wife, and, in that character, to contract debts for necessities, he becomes liable, though the creditor is acquainted with her real situation, and though the man is married to another woman; but this rule only holds during cohabitation, 2 *Esp.* 637; 4 *Camp.* 215.

If a man marry a wife with CHILDREN, he is not bound to maintain them by the act of marriage; but, if he hold them out as part of his family, he will be considered to stand in place of the parents, and liable even to a contract made by his wife, during his residence abroad, for their maintenance and education, 4 *East.* 8. But from the passing of the Poor Law Act, if a man marry a woman with children, *legitimate* or *illegitimate*, he is bound to maintain them till they attain the age of sixteen, or till the death of the mother, 4 & 5 W. 4, c. 76, s. 50.

A husband cannot be charged for *money lent* to his wife, even for the purpose of buying necessities, because it may be misapplied, 1 *Salk.* 387. But if the money be laid out in necessities, equity will consider the lender as standing in the place of the person providing the necessities, and decree relief.

The legal relations of husband and wife were lately (June 3, 1854) elucidated in the Court of Criminal Appeal. A woman had fled with a paramour from her husband's house, taking with her some money; the larger portion of this was subsequently found in the man's possession when he was arrested; he was tried for stealing the property, and convicted. The conviction was appealed against, on the ground that a wife cannot rob her husband, and consequently that the convict in this case could not have received stolen property. The Court were of opinion that the conviction was right. The general rule was, that the wife for stealing the goods of the husband could not be found

guilty of larceny if the wife took and applied to her own use the goods of the husband, for the husband and wife were one : but the law had qualified this—if the wife committed adultery, and then stole the goods with the said adulterer, then she had determined her quality of wife, and was no longer recognised as having any property in the goods of her husband ; and then the person who aided her in stealing the property was guilty of felony.

By the custom of London, if a wife trade by herself, in a trade with which her husband does not meddle, she may sue and be sued on her own account ; but this does not extend to any suit in the superior courts in Westminster.

#### V. SOLEMNIZATION OF MARRIAGES IN ENGLAND.

The Marriage Act, the 6 & 7 W. 4, c. 85, amended by 1 V. c. 22, and 19 & 20 V. c. 119, has multiplied the modes by which marriages may be contracted. With the exception of marriages according to Quaker or Jewish usage, where *both parties* must be of the Society of Friends, or both professors of Judaism, parties marrying may adopt any of the prescribed forms of marriage they think fit, no declaration of faith, or observance of established ritual, being requisite. Marriages may be simply a civil contract or religious ceremony, or both ; and there are now four distinct modes by which they may be legally solemnized. 1. In the accustomed way by licence from the archbishop or a surrogate, according to the rites of the Church of England. 2. By bans according to the rites of the Church of England. 3. By certificate, without bans, according to the rites of the Church of England. Lastly, marriage may be contracted in any registered place of religious worship, or in the office of a superintendent registrar.

The acts required to be done by persons who may be desirous of solemnizing marriage under the statute are the following :—

1. Persons desirous of being married according to the rites and ceremonies of the Church of England, may be so married, after publication of bans, or by licence, or by special licence, as heretofore ; or they may be married (without publication of bans, or by licence, or by special licence) according to the rites and ceremonies of the Church of England, on production of a certificate from the superintendent-registrar of the district, to be obtained in the following manner, namely :—

One of the parties intending marriage must give notice in writing to the superintendent-registrar of the district, within which the parties shall have dwelt for not less than seven days then next preceding ; or, if they dwell in different districts, they must give the like notice to the superintendent-registrar of each district. The notice must be in the form of a schedule, which the superintendent-registrar will furnish on being ap-

plied to, and must be filled up with particulars specified as to names, age, and occupation; whether they have resided within the district more than one calendar month, or, if not, how long; in what church or building the marriage is to be solemnized; the district and county in which the other party resides, when they dwell in different districts.

Every notice given must, by 19 & 20 V. s. 2, be accompanied by a solemn declaration in writing, that there is no impediment of kindred or alliance, or other lawful hindrance to such marriage; and when either party is neither widow nor widower, and under 21 years of age, declaration must be made that the consent of the party, whose consent is required by law, has been given to the marriage. Making wilfully false declaration subjects to the penalties of perjury. A form of notice is given in the act. After the expiration of twenty-one days from the entry of the notice in the Marriage Notice Book, if no impediment has been shown, the superintendent-registrar may be required to issue a certificate.

2. Persons (except Quakers and Jews) desirous of solemnizing marriage not according to the rites and ceremonies of the Church of England, may be married according to other rites and ceremonies, on production of a certificate obtained as above mentioned, in a registered place of worship, provided that every such marriage shall be solemnized with open doors, between the hours of eight and twelve o'clock in the forenoon, in the presence of some registrar of the district in which such registered building is situate, and of two or more credible witnesses: provided also, that in some part of the ceremony, and in the presence of such registrar and witnesses, each of the parties shall declare,—“I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.” And each of the parties shall say to the other,—

“I call upon these persons here present to witness, that I, A. B., do take thee, C. D., to be my lawful wedded [wife or husband.] Provided also that there be no lawful impediment to the marriage of such parties.

**MARRIAGE BY LICENCE.**—Persons may be married after seven days from the entry of the notice by licence. A licence may be granted by the superintendent-registrar: but only for marriage in a registered building within his district, or in his office: but before any licence can be granted by him, one of the parties intending marriage must appear personally before him, and, in case he shall not be the superintendent-registrar to whom notice of such intended marriage was given, shall deliver to him the certificate of the superintendent-registrar or superintendent-registrars, to whom such notice shall have been given; and such party shall make oath, or shall make his or her solemn affirmation or declaration, instead of taking an oath, that

he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of 15 days immediately before the day of the grant of such licence had his or her usual place of abode within the district within which such marriage is to be solemnized; and, where either of the parties (not being a widower or widow) shall be under the age of 21 years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, as the case may be.

3. Persons objecting to be married either according to the rites and ceremonies of the Church of England, or in any such registered building, may, after notice and certificate as aforesaid, solemnize marriage at the office of the superintendent-registrar, with open doors, between the hours of 8 and 12 in the forenoon, in the presence of the superintendent registrar and some registrar of the district, and in the presence of two witnesses, making the declaration, and using the form of words, required in the case of marriage in a registered building.

Quakers may contract and solemnize marriage according to the usages of their society, provided both parties are of that society, and that notice shall have been given to the superintendent-registrar, and a certificate shall have been issued as before mentioned.

Jews may likewise contract and solemnize marriage according to the usages of the Jewish religion, under similar provisions.

By 10 & 11 V. c. 58, the marriages of Quakers and Jews solemnized in England before the 1st of July, 1837, or in Ireland before the 1st of April, 1845, are declared good in law to all intents and purposes.

Every marriage of which notice has been entered as described, must be solemnized within three calendar months after such entry, or the notice must be renewed.

Every marriage solemnized after the 1st of March, 1837, under the provisions of the act in any other manner than as directed, will be null and void.

If any valid marriage shall be had under the provisions of the act by means of any wilfully false notice, certificate, or declaration, made by either party to such marriage, as to any matter to which a notice, certificate, or declaration is required, her majesty's attorney-general or solicitor-general may sue for the forfeiture of *all estate and interest in any property accruing to the offending party by such marriage*; and the proceedings and the consequences will be the same as are provided in the like case with regard to marriages by licence before the passing of the act.

To prevent marriages from being solemnized at a distance

from the residence of the parties, the 3 & 4 V. c. 72, enacts that no superintendant-registrar shall grant a certificate of notice of marriage where the building in which the marriage is to be performed is not in the district wherein one of the parties has dwelt for the requisite period, except in favour of particular religious sects.

*Amendments of the Marriage and Registration Acts.*—By 19 & 20 V. c. 119, the notice of marriage without licence must be suspended in the superintendant-registrar's office during the twenty-one days; but notice of marriage by licence need not be so suspended. In case of marriage by licence notice to the superintendant-registrar of one district will be sufficient. Notice of marriage without licence may be given in Ireland if one of the parties reside there. In Scotland certificate of proclamation of bans as to party resident there, equivalent to certificate of superintendant-registrar. The consent of the minister required to the solemnizing of a marriage in any registered building, 19 V. c. 110, s. 11. Parties to a marriage contracted at the registry office of any district may add the religious ceremony ordained by the church or persuasion to which they belong, s. 12. The superintendant-registrar, to whom notice has been given, may grant licence for marriage in a district in which neither of the parties reside, s. 13. Marriages of Quakers or Jews may be solemnized by licence.

## VI. MARRIAGES IN SCOTLAND.

By an act of last session the law of marriage in Scotland is amended, and a determinate period of residence made essential to the validity of the contract in that part of the United Kingdom. By 19 & 20 V. c. 96, after December 1, 1856, "no irregular marriage contracted in Scotland by declaration, acknowledgment, or ceremony, shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage; any law, custom, or usage to the contrary notwithstanding."

By s. 2, persons who after the above date have contracted an irregular marriage may, within three months, obtain a certified copy of entry by sheriff depute, that the parties were married, and that one of them lived twenty-one days preceding the marriage in Scotland: such certificate to be conclusive of the validity of the marriage.

Residence is by this act made an indispensable condition to the validity of a marriage in Scotland; and by consequence cannot be summarily or clandestinely solemnized at Gretna Green or elsewhere in that kingdom, any more than in England.

## VII. REGISTRY OF BIRTHS, DEATHS, AND MARRIAGES.

The 6 & 7 W. 4, c. 86, repeals former statutes on this subject, and provides for the establishment of a general register-office in London or Westminster, and the appointment under the great seal of a registrar-general of births, deaths, and marriages in England. His salary, which is not to exceed £1000, and those of the subordinate officers, and a specified portion of the expenses of registry, are to be paid out of the consolidated fund. Secretary of state, or the registrar-general, with his approbation, to make regulations for the management of the office and duties of the officers. Registrar-general is annually to prepare a general abstract of the number of births, deaths, and marriages registered, to be laid before parliament. Guardians of every union, parish, or place under the Poor Law Amendment Act, are within given times to divide their union or parish into districts, and to appoint to each some person, with such qualifications as the registrar-general may by rule declare necessary, to be a registrar of births and deaths : and each district to have a distinct name. The clerk to the guardians, if he think fit, and have the qualifications necessary, may assume the office of superintendent-registrar : otherwise, the guardians may appoint to the office. Every registrar and superintendent is to hold office during the pleasure of the registrar-general. Any officer of a union, &c., holding office under this act, to cease to do so on removal from his former office. Guardians to provide out of the poor's rates a register office, to be under the care of the superintendent. Registrar-general to furnish to the superintendent, for the registrars under him, strong iron boxes, with locks and two keys, for the safe custody of register books and documents, which, on removal from office, are to be given up to his successor, under pain of imprisonment by a summary process before justices. Registrar and deputy must dwell within their district, with their names and additions on their houses.

On the part of the community, the acts required to be done under the statute are the following:—

The father or mother of any child born after the 1st day of March, 1837, or the occupier of any house or tenement in which any such birth shall happen, must give notice of such birth to the registrar of the district in which the birth happens, within forty-two days next after the day of such birth; and the father or mother, or (in case of their death, illness, absence, or inability) the occupier of the house or tenement, must, within the said forty-two days, give information to the registrar, on being requested to do so, according to the best of his or her knowledge and belief, of the following particulars, namely:—the day of the birth of the child; the name (if any is given); the sex;



the name and surname of the father; the name and maiden surname of the mother; the rank, profession, trade, or calling of the father; the person giving such information must also state and sign in the register his or her name, description, and residence; and, unless this be done, *no register can be given in evidence*. No fee or payment can be lawfully required of the person so giving information respecting any birth: and the entry in the register, which the registrar will thereupon be obliged to make, being signed as aforesaid, will be evidence of such birth in any court of law or equity.

No birth may be registered after forty-two days from the time of such birth, unless the father or guardian of the child, or some person present at the birth, make a solemn declaration of the foregoing particulars, according to the best of his or her knowledge and belief, and the registrar shall register the birth accordingly, in the presence of the superintendent-registrar; and the person requiring the birth to be so registered shall pay to the superintendent-registrar 2s. 6d., and to the registrar (unless the delay shall have been occasioned by his default) 5s.

No person shall knowingly cause any birth to be registered otherwise than as mentioned, after forty-two days, under a penalty of £50; and no person shall knowingly cause any birth to be registered at all after six calendar months from the day of birth (except in the case of children born at sea), under the like penalty.

No register of births made after six calendar months from the day of birth (except in the case of children born at sea) will be received as legal evidence in any court of law or equity.

In all cases of DEATH the following is requisite:—

Some person present at a death, or in attendance during the last illness, or (in case of the inability of such person) the occupier, or (if the occupier be the person who has died) some inmate of the house or tenement in which a death shall have happened, must, within five days after the death, give notice to the registrar of the district, and must within eight days give information to the said registrar, on being requested to do so, according to the best of his or her knowledge or belief, of the following particulars, namely:—the day of death; the name and surname of the person who has died; the sex; the age; the rank, profession, trade, or calling; the cause of death; the person giving information must also state and sign in the register his or her name, description, and residence; and, unless this be done, *no register can be given in evidence*. No fee or payment can be lawfully required of the person so giving information respecting any death; and the entry in the register, which the registrar will thereupon be obliged to make, being signed as aforesaid, will be evidence of such death in any court of law or equity.

Every person who shall bury or perform any funeral or any

religious service for the burial of any dead body, for which no certificate shall have been made and delivered either by the registrar or (in cases of inquest) by the coroner, and who shall not within seven days give notice thereof to the registrar, will forfeit £10. And no certificate can be given (except by the coroner when an inquest has been held) unless the death has been registered by the registrar of the district. It is, therefore, of the greatest importance that persons directed as above shall, without delay, give information respecting a death to the registrar of the district within which the death has taken place, that he may register the same, and thereupon deliver a certificate to the undertaker, or other person having charge of the funeral.

**CAUTIONS.**—Every person wilfully making or causing to be made any false statement touching any of the particulars required to be known and registered for the purpose of such statement being inserted in any register of birth, death, or marriage, will be subject to the same pains and penalties as if guilty of perjury.

Persons failing to do that which is by an act of parliament enjoined are indictable for a *misdemeanor*, although no specific penalty is imposed by the act which they have so disobeyed.

**MARRIAGES ABROAD.**—Marriages of British subjects in foreign countries are valid, if made according to the laws of those countries, *Herbert v. Herbert*. And the *validity* of all marriages solemnized by a minister of the established church, in the chapel or house of a British ambassador or minister, or in the chapel of any British factory, or in the house of a British subject abroad, as also of marriages solemnized within the lines of a British army serving abroad, is fully secured by the 4 G. 4, c. 91.

Under 12 & 13 V. c. 68, greater facilities are afforded than those previously existing to British subjects residing in foreign countries, where there is resident a duly-authorized British consul. For the validity of marriages under the act, notice must be given by the parties intending to marry, in a prescribed form, to the consul, one calendar month next preceding, stating their names, professions, or condition, their residences, and that each party has dwelt within the consular district one calendar month at the least. Consul to file notices, register them in a book, and suspend copies in the office of the consulate. Persons duly authorized may forbid the solemnization of a marriage. Consul may grant licence to marry, but like consent to any marriage by licence is required as in England. Caveat against marriages to be lodged with the consul on payment of a fee of 20s. If a marriage be not solemnized within three calendar months, a fresh notice is requisite. After seven days by licence, or twenty-one days without licence, marriages may be solemn-

nized at the consulate, by or in the presence of the consul and two witnesses. The marriage fee, if by licence, 20s.; if otherwise, 10s. In case of fraudulent marriage, the guilty party to forfeit all property accruing from the marriage, as mentioned under the Marriage Act, 6 & 7 W. 4, c. 85, p. 148.

#### VIII. DEGREES OF AFFINITY AND BLOOD.

The prohibited degrees of marriage under the 25 H. 8, c. 22, and which make the children of such marriages *illegitimate*, are the following; namely, a man may not marry his mother or stepmother; his sister; his son's or daughter's daughter; his father's daughter by his stepmother; his aunt; his uncle's wife; his son's wife; his brother's wife; his wife's daughter; his wife's son's daughter; his wife's daughter's daughter; his wife's sister.

It is a vulgar error that *first* cousins may intermarry, and that *second* cousins may not; for they may both marry with each other. A contrary opinion has been derived from the prohibitions of the canon law, which have long ceased to be of force in respect of this subject.

Marriages within the prohibited degrees are not merely voidable by sentence of an ecclesiastical court, but by 5 W. 4, c. 54, are absolutely null and void if solemnized after the passing of the act (*August 31, 1835*).

The law of 1835, which made void *future* marriages within the prohibited degrees of affinity and consanguinity, legalized *former* marriages within the degrees of affinity, but not those of blood relations. The relation between a man and his wife's relations is a relationship of affinity.

### CHAPTER XI.

#### *Parent and Child.*

CHILDREN are either legitimate or bastards, and, according as they fall under one or the other description, are subject to different legal qualifications.

A *legitimate* child is one born in lawful wedlock, or within a competent time after a lawful marriage.

Independent of the obligations imposed by nature, parents are compelled by law to provide a maintenance for their *offspring*. By the 43 Eliz. c. 2, the father and mother, the grandfather and grandmother, of poor children, unable to work, either through infancy, disease, or accident, are bound to provide them with necessaries, at the rate of 20s. a month, or £13 a year.

The father alone has legal power over his children, and this power he may exercise till they attain 21 years of age. He is entitled to the custody and care of his children, and may retake

them if taken from his custody; and the courts will grant a *habeas corpus* to restore them, as well as entertain actions of trespass brought by him against parties taking them away. He has the right to direct the education of his children, and, being under age, may correct them in a reasonable manner, and delegate that authority to a schoolmaster or tutor, who must exercise his delegated power in a careful and temperate manner. But though the father, not the mother, has the legal custody of his children, by 2 & 3 V. c. 54, the lord chancellor, or master of the rolls, may, on petition of the mother, make an order for her access to her children, and, if such children be within the age of seven years, for the delivery of them to the mother until they attain that age, subject to such regulations as the judge may deem just and convenient. But no mother against whom adultery has been established in a court of law can have access to, or the custody of her children.

Courts of equity exercise a power of restraint upon parents in matters tending to the detriment of children who have *property* within their jurisdiction: and the lord chancellor has interfered to withhold the custody and education of his children from the father, whose conduct, as by living openly in adultery, has been grossly immoral, *Wellesley v. Duke of Beaufort*, 2 Russ. 1. The jurisdiction of the court, Lord Eldon said, in this case, was undoubted, and he had no hesitation in exercising it, where there was any property for the maintenance of children; but not otherwise.

By 5 G. 4, c. 83, persons being able, but wilfully neglecting, by work, to support their families, whereby they become chargeable to the parish, shall be deemed idle and disorderly persons, punishable by imprisonment and hard labour, not exceeding a month; and every person running away and leaving his wife or child chargeable, shall be deemed a rogue and a vagabond.

Also, by 5 G. 1, c. 8, if a parent run away and leave his children, the churchwardens and overseers of the parish may seize his rents, goods, and chattels, and dispose of them towards their relief.

The 59 G. 3, c. 12, provides for the application of the allowance of Greenwich pensioners, the wages of seamen, and other persons in public employments, who abscond from their families.

The laws impose certain duties on children towards their parents. A child is justifiable in defending the person and maintaining the cause of a parent; and, by the 43rd of Elizabeth, is compellable, if of sufficient ability, to provide for his support; and this he must do for an unworthy progenitor as for one who has shown the greatest tenderness in the discharge of his parental duties; but the obligation extends only to relations by

blood, not by marriage; so that a husband is not bound, even while his wife is alive, to support *her* parents.

## II. BASTARDS.

A bastard is not only one who is begotten, but born out of lawful matrimony; or is born so long after the death of the husband that, by the usual course of gestation, he could not be begotten by him.

But, in the *first* place, if the child be begotten while the parents are single, and they marry a few months after, the child is not a bastard, though begotten out of wedlock; for the child is legitimated by the recognition of the husband, 8 *East*. 93. And, in the *second*, though the usual course of gestation is nine calendar months, the law is not particular; and if the child be born within a few days of that time, it is accounted legitimate.

The legitimacy or illegitimacy of the child of a married woman, living in a notorious state of adultery, is a question for a jury to determine. But, in general, during coverture, the children are accounted legitimate, unless the absence of the husband beyond the seas, or some other circumstance, renders it physically impossible that the husband should have had such intercourse with his wife as to be the father of the child. In the *Say and Sele Peerage*, 1 *Cl. & Fin.* 507, where children were born whilst the wife was living in adultery, and the husband residing in another part of the kingdom, rendering access impossible, it was held that the illegitimacy was established. On the other hand, *access* of the husband is not conclusive of legitimacy; and in the *Banbury* case, though access was notorious, yet the House of Lords decided that the *concealment of the birth* of a child from the husband's knowledge was sufficient to prove an adulterous issue.

If the wife have children after separation by divorce, they are bastards; but, in a voluntary separation, by agreement, the law supposes access, unless the negative be shown.

The father of an infant *legitimate* child is entitled, as stated in the last section to the custody of it, but the mother of an *illegitimate* child is preferred to the putative father; and if the putative father of a bastard obtain possession of it by fraud, the court will order it to be restored on the application of the mother, *Rex v. Sope*, 5 *T. R.* 278.

If a person know that his natural child is boarded and clothed by another, and neither expresses dissent nor takes the child away, he is liable for such board and clothing without any promise so to do, *Nicholl v. Allen*, 3 *C. & P.* 36.

A bastard has no rights but what he can acquire: being, in

the eye of the law, the son of nobody, he cannot be heir to any one, nor have heirs but of his own body. He has, legally, no name, except that he gains by reputation. But he may be made legitimate by act of parliament.

## CHAPTER XII.

### *Guardians and Infants.*

A GUARDIAN is a temporary parent of a child for so long a time as the ward is an infant, or under age.

If an estate be left to an infant, the father is by common law the guardian, and must account to his child for the profits.

A father may, by deed or will, dispose of the custody of his child, either born or unborn, till such child attain the age of 21 years. These are called guardians by statute, or testamentary guardians.

As to persons considered within age, the period is different between males and females. A male 12 years old may take the oath of allegiance; at 14, is at years of discretion, and may consent or not to marriage; and if his discretion be actually proved, may dispose by will, of his personal estate; at 17, he may be an executor; and, at 21, is at his own disposal, and may alienate his lands, goods, and chattels. A female, at 7 years of age, may be betrothed, or given in marriage; at 9, is entitled to dower; at 12, is at years of maturity, and may consent or not to marriage; at 17, may be executrix; and, at 21, may dispose of herself and lands.

So that full age, in male or female, is 21 years, which day is completed on the day preceding the anniversary of a person's birth.

The power and reciprocal duties of guardian and ward are the same, during the infancy of the ward, as that of a parent and child; with this difference, that the guardian, when the ward comes of age, is bound to give him an account of all transactions on his behalf, and must answer for all losses by his wilful default and negligence.

Marrying a ward of the Court of Chancery, without the consent of the court, is a contempt for which the party may be committed or indicted, though he was ignorant of the wardship. To clear such contempt, a proper settlement must be made on the ward; and even that does not necessarily purge the contempt, 8 *Ves.* 74.

## II. LIABILITY OF INFANTS.

In law, a person is styled an infant till he attains 21 years, which is termed *full age*; and, until that period, his actions are placed under a peculiar criminal and civil jurisprudence.

Under the age of 7 years, he cannot be capitally punished for any criminal offence; but at 14 he may.

The period between the age of 7 and 14 is subject to great uncertainty; for, generally, the responsibility depends on the capacity to discern the good and evil tendency of actions.

Sir Matthew Hale gives two instances of capital convictions under the age of 14: one, of a girl of 13, who was burned for killing her mistress; another, of a boy, still younger, that had killed his companion, and hid himself, who was hanged: for it appeared, by his hiding, that he knew he had done wrong; and, in such cases, the maxim of the law is—*malice is equivalent to age*.

In civil matters, the law is so indulgent to infants as to allow them to contract for their *benefit*, but not otherwise. Thus, an infant may bind himself apprentice, because it is for his advantage. So, also, he may be bound, after he attains 21, to pay for meat, drink, physic, and other *necessaries*, furnished during his infancy; as, likewise, for good teaching and instruction. This binding means by *parol*: for, as an infant is not bound by any bond, note, or bill, which he may give, even for necessaries, the law will imply a *promise*, by the infant, to pay for the necessaries furnished for his maintenance, where no promise has been made. With respect to schooling, the infant is bound only where the credit has been really given to him. In all cases, however, where the infant is under the power of his parents, and is living in the same house with them, he will not then be liable even for necessaries.

In order to recover, it must appear that the things were actually *necessary*, and of reasonable price, and suitable to the infant's condition, rank, fortune, and estate, which points must be left to the jury to determine.

An infant is not chargeable on a contract for goods supplied to carry on trade; neither is he liable for *money* which he borrows, to lay out for necessaries, though he actually does lay it out for necessaries.

But if a person after attaining his full age and before any action brought, expressly and voluntarily promise to pay a demand upon him, though not for necessaries, he will thereby be rendered liable. Therefore, an express promise made, after the infant's attaining maturity, to pay a bill of exchange accepted by him during his infancy, is binding on him, 4 *Esp.* 187. But by the 9 G. 4, c. 14, it is necessary, in order to sustain an action, that all such confirmatory promises be *in writing*, signed by the party to be charged therewith.

If an infant be partner with another, and hold himself out as such, and do not, on reaching maturity, give notice of a dissolution, he is bound by the subsequent contracts of the firm, *Goode v. Harrison, B. & A.* 147.

Before the passing of 1 W. 4, c. 65, a court of equity could not grant leases of an infant's estate beyond his infancy; in consequence of which, necessary improvements were not made, and the property became deteriorated in value. The Court of Chancery may now exercise this power, whenever it appears for the infant's benefit; but, in order to guard against abuse, no fine or premium is to be taken, and the best rent is to be reserved. The law remains unaltered, as regards the mansion-house, park, and grounds occupied therewith: no lease of which can extend beyond the minority of the infant.

For facilitating the payment of debts out of real estate, a court of equity may direct mortgages, or the sale of estates by infants to purchasers, for the benefit of creditors, 2 & 3 V. c. 60.

## CHAPTER XIII.

### *Professional Classes.*

LAWYERS, or counsellors, for the terms are nearly synonymous, are of two sorts or degrees, *barristers* and *sergeants*. The former are admitted to plead at the bar, and take upon them the advising and defence of clients, after a certain period of attendance in the inns of court. A *sergeant* is a more ancient description of the learned profession, created by the queen's writ, and who, from being more intimately acquainted with the practice of the common law, enjoyed, till the court was thrown open to all barristers of the superior courts by the act of 1846, the exclusive privilege of pleading in the Court of Common Pleas. It is from the class of sergeants-at-law, or *serviens ad legem*, as they are termed in legal documents, that the fifteen judges are chosen.

From both these degrees the queen's counsel are selected; the two principal of whom are the attorney and solicitor-general. They are not allowed to be employed in criminal prosecutions against the crown without a licence, which is never refused, but the obtaining of it costs about nine pounds.

It is usual to grant patents of *precedence* to such barristers as the queen thinks proper to honour with that distinction; by which they are entitled to such rank and *pre-audience* as is assigned in their respective patents. These, as well as the attorney and solicitor-general of the queen consort, rank promiscuously with the crown's counsel, and, together with them, sit within the bar of the court, but receive no salaries, and are not sworn, and therefore are free to be retained in causes against the crown.



*Pre-audience*, or the right of sergeants and barristers to be first heard by the court, is a point of so much importance at the bar, that it may be proper to state the order of precedence as settled by royal mandate :—

1. Queen's Advocate-General.
2. Queen's Attorney-General.
3. Lord Advocate of Scotland.
4. Queen's Solicitor-General.
5. Queen's Premier Sergeant.
6. Queen's Ancient Sergeant, or the oldest of the Queen's Sergeants.
7. Queen's Sergeants.
8. Queen's Counsel, and Counsel having patent of precedence before April 24, 1834.
9. Sergeants-at-Law.
10. Recorder of London.
11. Common Sergeant of London.
12. Advocates of the Civil Law.
13. Barristers at large, according to the dates of their call to the Bar.

In the Court of Exchequer two of the most experienced barristers, called the *postman* and *tubman*, (from the places where they sit,) have precedence in motions.

The general rules of qualification to entitle a person to be called to the bar in all the inns of court are,—that he must be 21 years of age, have kept twelve terms, and have been for five years at least a member of the society: if he be a master or bachelor of arts of either of the English universities, or of the Dublin university, it is sufficient if he has kept twelve terms, and has been *three* years a member of the inn by which he desires to be called to the bar. In the Inner Temple a candidate for admission to that house must, previously to his admission, undergo an examination by two barristers appointed by the bench as to his proficiency “in classical attainments, and the general subjects of a liberal education.” This rule has not been adopted at any of the other three inns of court.

In forensic pleading, a barrister has privilege to enforce anything communicated to him in his professional capacity, if pertinent to the matter in issue, and is not bound to examine whether it be true or false. But to bring an observation within the rule of being spoken in judicial course, it must be strictly relevant to the matter in issue; and the client's ignorance of what is, or is not, so relevant, will often protect *him* before the court, where the advocate, from the presumption of superior legal knowledge, would not stand excused.

A counsellor can maintain no action for his *fees*, which are given, not as a salary or hire, but as a gratuity, which a barrister cannot demand without injury to his reputation. On the

other hand; a client cannot maintain an action to recover back a fee to counsel for negligence, want of zeal, or skill in the conduct of his cause; nor even if he fail to attend to argue a cause for which he has received a fee, *Peake's R.* 122. But if counsel accept a fee, and become counsel, and discover his instructions to the opposite side, an action lies. And a counsel signing a bill in chancery, containing scandalous or impertinent matter, is, on complaint, liable to pay costs.

Both barristers and attorneys are entitled to attend, at sessions, to take upon them the causes of others, and to prosecute for the crown. At sessions where a sufficient number of barristers attend, it is usual to give them sole audience, and the attorneys are, in consequence, not heard in person. At sessions where the bar do not attend, as in most boroughs and cities, it is usual to hear the attorneys as advocates; and though it may be doubted whether in strictness they are entitled to prosecute indictments, it is customary, and, certainly, convenient, to allow them that privilege. In cases where the bar has not been accustomed to attend, but two or more barristers wish to do so, it is usual for them to intimate their desire to the chairman, and to request that they may have pre-audience; and, if this request be granted, the attorneys cannot afterwards be heard in their presence, unless they should be all retained on one side, *Merrifield's Law of Attorneys*.

It appears neither counsel nor attorneys have a legal right to be present in any preliminary proceeding before a grand jury, 3 *B. & A.* 432: but by 6 & 7 *W. 4*, c. 114, counsel may defend prisoners (or attorneys, in courts where they practise) in cases of felony, as well as in treason and misdemeanor, and in summary convictions they may defend and examine, and cross-examine, witnesses.

Sergeants and barristers rank as esquires; they are privileged from arrest for debt, while attending their professional duties; and in any action against them are entitled to have the venue laid in Middlesex. But as barristers were found not to be exempt from the late London Court of Requests (10 *Bing.* 335), they may be amenable to the city county court.

## II. ATTORNEYS AND SOLICITORS.

Attorneys and solicitors are persons duly admitted into the queen's courts, where they act as the agents and representatives of their clients. They are considered public officers belonging to the courts in which they are admitted, and, as they enjoy certain privileges on account of their admission, so they are peculiarly subject to the control of the judges, who exercise summary jurisdiction over them, not merely in cases where they have been employed in the conduct of suits, or any matter

purely professional, but wherever the employment is so connected with their professional character as to afford a presumption that it formed the ground of their employment. Thus, one attorney has been compelled to return part of an apprentice premium, 3 *B. & A.* 257; one to give up papers and deeds, which had been placed in his hands as steward for the owner of the estate to which they refer, 3 *T. R.* 275; and another to pay over money which he had received, when employed to collect the effects of an intestate by the administrator, although he had never been employed by him to prosecute or defend any suit or equity, 4 *B. & A.* 47.

The Court of Chancery exercises the like power over its solicitors and clerks in court.

The qualifications chiefly enabling an attorney to practise are—the service of a clerkship of full five years, under a written contract, termed articles of clerkship, to some qualified attorney or solicitor; or a service of three years will suffice in case the degree of a bachelor of arts or of law has been obtained within four years preceding, in one of the universities of Oxford, Cambridge, Dublin, London, or Durham; and any articulated clerk may serve part of his time, not exceeding one year, as pupil to a practising barrister or certificated pleader. After such service a public examination takes place before certain examiners appointed by the judges; which passed, the candidate is admitted in open court, taking certain oaths, one of which is, “to demean himself properly as an attorney.”

By 16 & 17 V. c. 59, articles of clerkship to attorneys of the county palatine courts may be stamped for admission into the superior courts of Westminster, on payment of the additional duty of £60.

A suit is ended by the judgment, and the attorney is then entitled to call for the payment of his bill, 1 *B. & Adol.* 15.

The taxed costs, termed costs between party and party, differ from the costs between *attorney and client*; the last including the *extra charges* to which the attorney has been liable, pending the suit, and charged to his employer.

An attorney, it seems, after the commencement of a suit, may insist on being supplied with the necessary funds for carrying the same to a conclusion, or abandon the suit on reasonable notice; but such demand of money on account is not deemed liberal, unless the client's circumstances are doubtful, or the proceedings very expensive.

By 6 & 7 V. c. 73, thirty-two acts respecting solicitors and attorneys are wholly or partly repealed, but fifty-eight others relating to them are wholly or partly retained. Under this act power is given, for the first time, to tax bills for *conveyancing* business; and permission may be given to attorneys to bring actions before the expiration of a month after the delivery of

their bills of cost. There are seven provisions in the act relating to bills of costs. It is enacted that attorneys and solicitors shall not commence an action until one month after the delivery of a bill of costs. Reference of bills to the proper officers may be made within a month, whether they relate to business transacted in the court or not. Taxation may be ordered after a month, but not after a verdict has been obtained, or twelve months have elapsed since the delivery of the bill, unless under special circumstances. Proceedings in actions are to be stayed during a reference. There is a proviso to the first of the seven clauses, that a judge may authorize an attorney or solicitor to bring an action within a month, on proof that there is probable cause that the party is about to quit England. Taxation may be ordered after payment, provided it is made within twelve months. All applications under this act are to be made in the matter of the attorney, and the amount certified by the proper officer to be due to be enforced. There are many other regulations as to the admission of persons as attorneys, and no attorney is to have more than two articled clerks at one time.

By 14 & 15 V. c. 88, the provisions in relation to admission and enrolment, as attorneys of bachelors of arts or laws at Dublin, are extended to like degrees in Queen's University, Ireland. Provisions of former acts as to persons bound for five years, extended to students of the Queen's Colleges attending lectures and passing examinations in faculty of law during two collegiate years, and privileges given to bachelors of arts or laws in Universities of Oxford, Cambridge, Dublin, Durham, and London, as to attorney's admission in England, extended to like degrees in the Queen's University. Certificate of vice-chancellor of Dublin University, or dean of faculty of law in Queen's Colleges, to be sufficient evidence of attendance on lectures and examinations.

An attorney duly sworn, may be sworn, admitted, and enrolled in any of the superior courts of law, may be sworn and admitted in the Court of Chancery without fee or stamp duty, and may practise in bankruptcy and all inferior courts of equity; and so a solicitor in any court of equity may be sworn, admitted, and enrolled an attorney of the courts of common law. Besides swearing, admission, and enrolment, an attorney must take out an annual certificate at the Stamp Office, in order to be duly qualified for practice; and in default is liable to a penalty of £50, and incapacity to sue for his fees. The master of faculties in London may admit any attorney, solicitor, or proctor to practise as a public notary, in districts distant ten miles from the Royal Exchange, where the number of notaries is insufficient. Notaries admitted under the act, practising out of the district to which

they are restricted, liable to be struck off the roll of faculties, 3 & 4 W. 4, c. 79.

An attorney is bound to use care, skill, and integrity; but he is not responsible for any error or mistake arising in the exercise of his profession, 4 *Burr.* 2061. He ought personally to conduct his own business, which has been legally decided to be a *profession*, not a *trade*, and ought not to delegate matters of importance, that require skill and experience, to clerks, who are less informed and totally irresponsible.

A party who entrusts papers to an attorney, with an intimation to pay him if a certain property be recovered, is not liable for the costs of an action commenced and abandoned at the attorney's discretion. *Tabram v. Horn*, 1 *M. & R.* 228.

It is the duty of an attorney, before suing out a writ, to communicate personally with his client, if possible; at all events to make inquiry into the nature of the claim, and of the evidence in support of it; otherwise he cannot recover for business done in the suit, 1 *Tyrrw.* 121.

The property in deeds, copies, and drafts, is in the client, not the attorney, *Alison v. Rayner*, 7 *B. & C.* 528. But an attorney has a lien for the amount of his costs upon the deeds and papers that have come into his possession in the course of his professional employment, and also on any money received for his client. As further security, an attorney cannot be discharged by his client and another substituted without a judge's order, which is never granted unless the attorney's bill has been first paid.

An attorney mixing purchase-money received with his own, and paying it into his banker's hands on his own private account, has been held liable, in the event of the banker's failure, *Robinson v. Ward*, 1 *Ry. & M.* 274.

As a check against the intrusion of unprofessional persons into practice, it is enacted by 44 G. 3, c. 90, that if any person shall, for or in expectation of any *fee* or *gain*, prepare any conveyance of, or deed relating to, any real or personal estate, or any proceeding in law or equity, except those who are qualified, having taken out their certificates, he shall forfeit £50. Persons solely employed to engross any instrument or proceeding, not drawn or prepared by themselves; and public officers preparing official instruments, are excepted from the penalty. Neither is any person liable who prepares any will or other testamentary paper, or any agreement not under seal, or any letter of attorney.

By reason of the supposed necessity of an attorney's presence in court, he is exempt from offices requiring personal service, as those of sheriff, constable, juror, and overseer of the poor. He is disqualified to be a justice of peace while in practice, un-

less it be in a city, town, or cinque port, having justices within their respective limits.

A material change in legal etiquette was made in 1852, by 15 & 16 V. c. 54, s. 10, authorising a barrister to plead in a County Court without previously receiving his instructions from an attorney.

### III. PHYSICIANS.

By the 14 & 15 Hen. 8, the King's charter for incorporating the College of Physicians of London is confirmed; they are to choose a president, and have perpetual succession, a common seal, and ability to purchase land and make by-laws. Eight of the chiefs of the college are to be called *elects*, who, from among themselves, are to choose a president yearly.

Physicians in England shall be examined by the college, and have testimonial letters from the president and three elects, unless they be graduate physicians of Oxford or Cambridge. Physicians practising in London, or within seven miles, without being approved, forfeit £5; and in any other part, unless approved by the bishop of the diocese, they are subject to the like penalty.

By the 32 H. 8, c. 40, four physicians shall be chosen by the college to search apothecaries' wares, and in company with the warden of the mystery of apothecaries, may destroy adulterated drugs. Apothecaries refusing to be searched, forfeit £5; and physicians to act 40s.

By 17 & 18 V. c. 114, every bachelor and doctor of medicine of the University of London is enabled, without further examination, to practise physic, 'as fully and in the same manner as graduates of Oxford and Cambridge, but the privilege is not to extend to the practice of surgery, pharmacy, or midwifery. Graduates, who may have incurred penalties by practising in certain cases as physicians, before the passing of this Act, are relieved, and certificates given and other acts done by them are declared valid.

Physicians in London may practise surgery.

The fees of a physician, like those of a lawyer, are honorary, and not demandable of right; consequently a physician cannot maintain an action for them, 2 *T. R.* 317. With respect to surgeons, however, it is different. They may maintain an action for their care and attendance, and for medicines found and provided, 3 *Esp.* 192.

### IV. SURGEONS AND APOTHECARIES.

The business of surgeons is to deal in the mechanical part of physic by performing cures, or operating with the hand, and they must not, in that capacity, administer medicine internally.

By the 32 H. 8, the surgeons and barbers were incorporated

into one company; but at the same time a distinct line of division was drawn between the practice of the two branches. No person practising the art of barbery is to intermeddle with that of surgery, except as to drawing of teeth which barbers may continue to do as before; and, on the other hand, no person devoting himself to surgery is to exercise what is pithily called "the feat or craft" of shaving. By the 18 G. 2, the union is dissolved, and the surgeons of London were made a separate corporation, with power to enjoy the same privileges as by former acts or grants.

Candidates to serve as surgeons in the army or navy are required to be examined by the Surgeons' Company.

By the 34 & 35 H. 8, any subject of the king, having knowledge of the nature of herbs, may minister to any outward sore-wound, or disease.

An action on the case lies against a surgeon for gross ignorance and want of skill in his profession, as well as for negligence and carelessness, to the injury of a patient, *Seare v. Prentice*, 8 E. R. 348.

A medical practitioner, whether *licensed or not*, is criminally liable and guilty of manslaughter if the death of a patient be caused by his treatment, and he have shown gross ignorance of his art, or gross inattention to his patient's safety, or gross rashness in the application of a dangerous remedy, *Rex. v. St. John Long*, 4 C. & P. 398, 423.

A surgeon having a certificate from the College of Surgeons cannot recover for medicines and attendance on a patient in a typhus fever, without a certificate from the Apothecaries' Company as well; a typhus fever not being a surgical case, 4 Bing. 619.

Apothecaries were originally associated with the grocers, but obtained a separate charter of incorporation from James I. in 1606. Their business is to prepare and administer the prescriptions of the physician, pursuant to his directions; or they practise physic on their own account, and administer medicines on their own responsibility. The business is generally combined with that of surgery, constituting the general medical practitioner.

By the 6 W. 3, c. 4, apothecaries free of the company in London, practising there, or within seven miles, are exempt from parochial offices, and from serving on juries, on producing a testimonial of their freedom. Apothecaries in other parts, brought up in such art, or having served an apprenticeship of seven years, are also exempted.

By the 55 G. 3, c. 19, which is the general Apothecaries Act for England and Wales, the masters and wardens of the Apothecaries' Company, or persons appointed by them, may enter the shops of apothecaries, and examine drugs, and impose and levy

finer for such as are unwholesome and adulterated. Penalty for the first offence, £5; for the second, £10; for the third, and every subsequent offence, £20.

Any apothecary refusing to compound, or unfaithfully compounding, the prescription of a regular physician, is liable to be fined £5; and for the third offence of the same kind forfeits his certificate.

By the same act, amended by the 6 G. 4, c. 133, no apothecary, after the 1st of August, 1815 (except persons in actual practice on or before that period), is to practise, unless he has received a certificate of being duly qualified. No person can be admitted to be examined, unless he be twenty-one years of age, and have served an apprenticeship of at least five years with an apothecary or a surgeon. Penalty for acting without a certificate £10, or if only an assistant, £5.

By the same acts no apothecary shall be allowed to recover any charge claimed by him in any court of law, unless he was in actual practice on or before the 1st of August, 1815, or he has obtained a certificate to practise as an apothecary.

By the 6 G. 4, surgeons in the navy, and surgeons and apothecaries in the army, may practise without certificate from the court of examiners, or without having been in actual practice prior to 1st August, 1815.

In the constructions by the courts under these acts, it is held, that an apothecary who claims an exemption, on account of having practised *prior* to the 1st of August, must have actually exercised his proper vocation,—namely, the making up a *physician's prescription*; without this, unless he has received a certificate, he cannot recover for medicines, *Apothecaries' Company v. Warburton*, 3 B. & A. 40.

The right of an apothecary to charge for attendance has been decided to be not matter of law, but to be implied from the usage of the place, *Smith v. Chambers*, 2 Phillips, 221.

#### V. PHARMACEUTICAL CHEMISTS.

Certain persons desirous of advancing chemistry and pharmacy, and of promoting a uniform system of education among those who practise the same, formed themselves into a society called "The Pharmaceutical Society of Great Britain." This society was incorporated by royal charter, February 18, 1843, whereby it was provided that the society should consist of members who were chemists and druggists, or who had been established as such on their own account at the date of the charter, or who had been examined and certified by the council of the society as qualified for admission. For extending the objects of the society and the prevention of ignorant and incompetent persons assuming the title of Pharmaceutical Chemists, the



15 & 16 V. c. 56, enacts, that the charter of the society shall be confirmed, except as altered by the act.

Under this act, by s. 2, power is given to the council to alter the by-laws, and to appoint a registrar, who is to make and keep a register of the members of the society, of associates, and students or apprentices. All persons being such are entitled to be registered. Persons are to be appointed to conduct examinations, whose certificates will grant right of registry. The council are also required to appoint examiners for Scotland, who have the same powers as the examiners in England. No member of the medical profession, or who is practising under the right of a degree of any university, or diploma or licence of a medical body, to be entitled to be registered; and if any person who is registered become such, he is thereby disqualified from remaining on the register.

Any person who is not registered assuming the title of pharmaceutical chemist, incurs a penalty of £5. Registrar falsifying register, &c., guilty of a misdemeanor. Persons forging false certificates, guilty of misdemeanor.

The act contains no provision forbidding chemists and druggists or others, who do not assume the title of pharmaceutical chemists, from dispensing medicine.

#### VI. ANATOMISTS.

The 2 & 3 W. 4, c. 75, after reciting the necessity of anatomical examinations for the cure and prevention of diseases, empowers the home secretary for Britain and chief secretary for Ireland, to grant licences to practise anatomy to any physician, surgeon, or medical practitioner, or to any student attending any school of anatomy, on application from the party, countersigned by two justices, certifying that the applicant is about to carry on the practice of anatomy.

Three or more inspectors to be appointed, with salaries not exceeding £100 each and expenses, who are to inspect places of anatomy, and make quarterly returns of subjects removed for dissection. Persons having lawful possession of bodies may submit them to dissection, unless the deceased had expressed a wish in his last illness to the contrary, or a known relative shall require the body to be interred without anatomical examination. A relative may object to dissection, although the deceased had expressed such to be his wish after death. No body to be removed from the place of death till forty-eight hours after, nor till after twenty-four hours' notice to the inspector; or if no inspector be appointed, to some neighbouring medical person; nor unless a certificate stating the cause of death, signed by a medical person who had attended the deceased, or by a medical person called in after death, who to the best of his knowledge

shall state the cause thereof, but who shall not be concerned in examining the body after removal; such certificate to be given to the party receiving the body for dissection. Anatomists not to receive or examine bodies without certificate. Anatomists on receiving a body to demand a certificate, to insert a copy thereof in a book, and within twenty-four hours transmit certificate to the inspector, with a return of the day, hour, and from whom the body was received, the date and place of death, the sex, and (if known) the name, age, and last place of abode of the deceased. Book to be produced to inspector when required. Anatomy not to be practised until one week's notice of the place has been given to the secretary. Bodies to be placed in a decent coffin or shell before removal for examination, and provision made by the parties removing them for their decent interment after: a certificate of such interment to be transmitted to the inspector within six weeks after the body was received. A licensed person not liable to prosecution or punishment for having in his possession for examination, or for examining any body according to the act. Act does not prohibit any *post-mortem* examination required to be made by competent legal authority. Bodies of murderers *prohibited* to be dissected, but may be buried within the precincts of the prison in which they had been confined prior to conviction, ss. 2-16.

Persons offending against the act liable to imprisonment, not exceeding three months, or to a fine not exceeding £50, s. 18.

## CHAPTER XIV.

### *Principal, Factor, Agent, and Broker.*

A FACTOR is the agent of a merchant, or trader, constituted by letter of attorney, and whose power and responsibility are generally limited by the commission of his principal.

If a factor buy goods on account of his principal, where he is used so to do, the contract will bind the principal to a fulfilment of the bargain. But where goods are bought or exchanged without order, it is at the merchant's option whether he will accept of them or turn them on the factor's hands.

If an agent, by the adventure of his principal's property, not authorized by the usage of trade or the terms of his employment, and without the express consent of his principal, occasion loss to the principal, he is answerable to the amount of the damage sustained: but mere negligence is not sufficient to render an agent liable; it must be gross carelessness, fraud, or a breach of positive orders.

If an agent deals or speculates with the effects of the principal, whatever advantage or profit accrues from the transaction

is for the benefit of the principal. So, if an agent employed to purchase an estate buys it for himself, he is considered only a trustee for the principal, 1 *Russ. & M.* 53.

An agent employed to sell cannot be a purchaser; nor if employed to purchase can he be the seller, unless by the express consent of his employer.

An agent has a lien on the property of his principal, or on his securities, as well for incidental charges as the general balance due to him.

Prior to the alteration in 1825, the law was extremely hard upon *third parties*, in their transactions with factors or agents. *First*, in case of advances made to factors, or agents, upon security of merchandise, in ignorance of their not being the owners of the property, the party so advancing might be deprived of his security by the principal. *Secondly*, in case of purchases of merchandise from factors or agents not invested with the power of sale, though that factor is unknown to the purchaser, yet the purchaser would be liable to pay a second time the value of the merchandise. To remove these hardships, the 4 G. 4, c. 83, and the 6 G. 4, c. 94, were passed, establishing the validity of contracts made in relation to merchandise entrusted to factors or agents.

Under the 6 G. 4, all persons entrusted for consignment or sale with goods, and who shall have shipped them in *their own names*, and any person in whose names such goods shall be shipped by any other person, shall be deemed the OWNERS, so far as to entitle the consignee to a lien thereon, in respect of any money advanced to the person in whose name the goods shall be shipped, or in respect of any money or negotiable security received by him to the use of such consignee, in like manner as if true owners thereof; *provided* the consignee had no notice at or before the advance of the money, by the bill of lading, or otherwise, to the contrary; the person also, in whose name the goods are shipped is to be deemed the owner, unless the contrary be shown.

Persons entrusted with, and in possession of, any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, warrant, or order for delivery of goods, shall be taken to be the owner of the goods mentioned in such documents, so as to give validity to any contract to be entered into by such person for the sale thereof, or for the deposit or pledge thereof, as security for any advance made upon the faith of such documents; provided the persons making the advance have no previous knowledge that the person so entrusted is *not* the actual and real owner of such goods or merchandise.

Persons may take, in deposit or pledge, any goods or merchandise so entrusted, as security for any debt or demand; but

they do not thereby acquire a greater power over the deposit than the factor possessed at the time of making the deposit

All contracts and payments made with agents so entrusted are binding on the principal, if they be made in the ordinary course of business, or out of that course, if within the agents authority, and the parties had no notice that such agent is not authorized to sell the goods or receive the purchase money.

Nothing in the act prevents the principal from recovering his goods from his factor before they have been sold deposited, or pledged or from the assignee of the factor, in the event of his bankruptcy, nor from recovering the purchase money, in the event of the sale, or from recovering the goods, by repaying any sum of money, or negotiable instrument, advanced upon them, provided, in case of the bankruptcy of the factor, the principal shall be held to have discharged any debt due *by him* to the estate of the bankrupt

By 5 & 6 V c 33, the law is amended relating to advances *really* made to agents entrusted with goods, and facilitates and gives protection to the common practice of making advances on the security of goods or documents to persons known to have possession thereof as agents only Under this act any agent who is in possession of goods, or of the documents of title to them, is to be held in law as the owner, to the effect of giving validity to any contract or agreement by way of pledge, lien, or security *really* made by any person with such agent The agent may receive back commodities or titles which have been pledged for an advance, and may replace them with others, but the lenders lien is not to extend beyond the value of the original deposit

The documents which are held to authorize the agent in disposing of the property represented by them, and the transference of which is a sufficient security to the lender, are any bill of lading, India warrant, dock warrant, warehouse keepers certificate, warrant, or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control over the goods The property represented by the document is held to be conveyed as soon as the document is transferred, though the property is not in the agent's hands, and an advance of money on consignment or indorsement is valid, though the consignment or indorsement does not take place at the date of the agreement A contract by the agent's clerk, or any person acting for him, is binding.

## II. BROKERS

These are agents, who negotiate bargains and sales between merchants and others on commission, and chiefly differ from factors in not having possession of the goods bargained for.

When the agreement for sale or purchase has been made, the broker gives to the seller a memorandum of the sale, to the buyer a memorandum of the purchase, and the delivery of these notes, which are called *bought* and *sold notes*, binds the bargain, and confers on the principal the same rights and liabilities as if the transaction had been carried on by himself in person. In London and Bristol brokers are licensed by their respective corporations, and are subject to penalties for acting without licence, for not registering their contracts, or not revealing the names of their principals, or for dealing in commodities on their own accounts, or for taking any other profit than their brokerage or commission. (6 Anne, c. 16; 3 G. 2, c. 31; 57 G. 3, c. 60.) They carry about them a silver medal, as evidence of their qualification, are bound by oaths, and give bond for the faithful execution of their office.

*Ship-brokers* form an important class in all great mercantile ports. It is their business to procure goods on freight, or a charter for ships outward bound; to enter and clear vessels at the custom-house; to collect the freight on goods, and generally to take an active part in all business between merchants and ship-owners. Most ship-brokers are also *insurance-brokers*, in which capacity they procure the names of the underwriters to policies of insurance, and settle the conditions of the risk and the rate of the premium. Unlike other brokers, an insurance-broker, though he has given up the name of his principal, continues personally liable to the underwriters for the amount of the premium. But he is not liable to make good to the owner of the ship or merchandise, who must look to the underwriter, in the event of loss.

A ship-broker is not within the meaning of the statutes for the regulation of brokers, 4 Bing. 301; but a stock-broker who transacts business in the public funds is bound by them. Stock-brokers are paid by a commission, limited by 10 Anne, c. 19, to 2s. 6d. per cent., which they are entitled to deduct from the produce of the sale.

## CHAPTER XV.

### *Authors, Publishers, Printers, Engravers, Sculptors, Designers, and Newspaper-Proprietors.*

LITERARY property may be defined to be the product of the intellect, published to the world, under such conditions as confer on the author or his assignee the right of publication, and of all benefits accruing therefrom. The peculiarity of this species of property consists in its intangible nature, which leaves no room for applying to it the ordinary criteria of possession or occupancy, by which material property is ascertained; and a pe-

culiar law has thus become necessary for its protection. A manuscript or a painting, while the former is not printed or the latter engraved, is viewed as material property, subject to the ordinary rules of possession. It is when copies are multiplied for publication that the specialities of literary property are constituted and brought into existence.

The general diffusion of literature and great value of popular compositions, have given to the productions of the press an importance unknown to a former period. Consequently it is important to recapitulate the laws relative to literary property, and the regulations by which author and publisher are secured in the enjoyment of the profits resulting from their labours and purchases.

With respect to the *originality* of a literary composition, it consists in the *sentiment* and *language*; the same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition to the ear or eye of another, by recital, writing, or printing, it is always the identical work of the author which is so conveyed; and no one has a right so to use it without his consent.

A *fair* and *bond fide* abridgment of any book is considered a new work; and, however it may injure the sale of the original, yet it is not deemed a piracy, or violation of the author's copyright; and, in the case of *Kearsley v. Carey*, Lord Ellenborough held that variance in *form* and *manner* was a variance in substance; and any material alteration, which was an improvement, would not be considered a piracy. But, in all abridgments, and also history, chronology, dictionaries, and the like, it must be left to the jury to determine whether the publication complained of is a *servile* copy and *imitation*, or an original work upon the same subject.

No one but the author, or his assignee, has a right to print or publish *original* notes, or *additions* to an old work, though the chief copyright may be opened; and any person has liberty to publish the original work, without the notes or improvements, *Carey v. Longman*, 1 *E. R.* 358.

A translation of a work, either from the dead languages, or of a work written in Latin by an Englishman, or of papers in any of the modern European languages, has been held to be copyright.

An author has a copyright in his *manuscript* before it is printed, 2 *B. & A.* 298, and the *gift* of it to another does not of itself convey the right to publish by printing or otherwise; for the Court of Chancery will interfere to restrain the publication of the manuscript of a deceased person; and the letters of a deceased are the subject of copyright in the representatives, if of a literary nature; or, if their publication involve a breach

of confidence, or tend to wound private feelings, an injunction may be obtained.

Every assignment of copyright, to be valid, must be *in writing*, and be attested by two credible witnesses; no assignment by parol is sufficient, not even of a song, *Power v. Moore*, 3 M. & S. 7.

If an author print and publish abroad, and do not use due diligence to be the first printer or publisher here also, any third person, procuring the work from abroad, may lawfully print and publish it here, 2 Bar. & Cress. 870. An alien author may acquire a British copyright by *first* publishing his work in England; this was decided by Chief Justice Campbell, sitting in appeal in the Court of Exchequer Chamber, May 20, 1851, in *Boosey v. Jeffrey*; thereby reversing the previous copyright law of the superior courts in *Boosey v. Purday*.

It has been decided in *Jeffreys v. Boosey* (House of Lords, Aug. 1855), that a foreigner may have copyright in a work composed and published in England; or if first published in England by a foreigner resident here at the time of publication, though he has only been resident here for a week or a day.

## II. COPYRIGHT ACT.

Copyright is by the common law a perpetual right vested in the author of a literary composition, but the enjoyment of the right, the mode of its registry and assignment are now regulated by the 5 & 6 V. c. 45. According to this act copyright is defined to be the right of printing or multiplying the copies of a book; and a book is explained to include any volume, part or division of a volume, pamphlet, sheet of letter-press, *map*, *chart*, or *plan*, separately published.

From the passing of the act (July 1, 1842), it is declared that the copyright of every book published in the lifetime of its author shall endure for his natural life, and for seven years from the time of his death, but if that time expire earlier than forty-two years from the first publication, then to endure for the said term of forty-two years; and for which term also the copyright of any work published after the author's death shall continue to be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns; and in cases of substituting copyright the term is similarly extended, except where the copyright belongs in whole or in part to an assignee for *other consideration than that of natural love and affection*, in which case it shall not be extended, unless its extension be agreed to between the proprietor and the author, or his personal representatives if dead; but the judicial committee of the privy council may license the republication of any book which the proprietor refuses to publish after the

death of the author, subject to such conditions as they may think fit.

A perfect printed copy of the whole of every book, and of any subsequent edition published with *additions* or *alterations*, is to be delivered within one calendar month after publication to the British Museum, between ten and four o'clock of the day, on any day except Sundays, and Ash Wednesday, Good Friday, and Christmas Day, to the officer appointed to receive the same; and a copy of every book to be delivered in like manner, within a month after demand, to the officer of the Stationers' Company for the following libraries, viz. the Bodleian, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin: or the publishers may deliver the copies direct to the libraries, instead of doing so to the Stationers' Company; the neglect of delivering such copies to subject the party to a penalty of £5, to be recovered by any authorized officer in an action of debt. A book of registry is to be kept at Stationers' Hall; such registry to be open to inspection on payment of 1s. for every entry which shall be searched for or inspected, and a certificate of the same is to be given by the clerk when required, on payment of 5s.; such certificate to be received in all courts as *prima facie* proof of the proprietorship or copyright of such work. Making or causing to be made any false entry, to subject the party to the penalties of an indictable misdemeanor.

The proprietor of any copyright, on payment of 5s., may require an entry to be made in the registry of the title, time of first publication, names and abodes of the publisher and proprietor, in a prescribed form; and such proprietor may assign his interest or a part thereof, by making an entry of the same in the registry, such assignment to have the force of a deed, without being subject to any stamp or duty. Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or to a judge in vacation, who may order such entry to be varied or expunged.

Any person pirating any such work is rendered liable to a special action, and the defendant is required to give the plaintiff notice of the objections to the plaintiff's title on which he means to rely; and no person, except the proprietor of the copyright, shall be allowed to *import into the British dominions, for sale or hire, any copy of such book reprinted elsewhere*, under penalty of forfeiture of the book; the officers of customs or excise are also empowered to seize such books, and persons so offending, convicted before two justices, are liable to a penalty of £10 and double the value of every copy of the book so imported, £5 to the officer, and the remainder of the penalty to the proprietor.

The copyright in *encyclopædias, reviews, magazines, periodical*



*works, and works published in a series*, is vested in the proprietors or projectors who shall have *employed and paid* persons to compose the same, as if they were the authors; but in the case of essays, articles, or portions forming part of and first published in reviews, magazines, &c., the right of republishing to revert to the author after *twenty-eight years* for the remainder of the term given by this act, but this is not to affect any person who shall have reserved his right of publishing his articles in a separate form. Such serial works may be entered as a whole at once in the registry at Stationers' Hall, and have the continued benefit of such registration.

All copies of books pirated are to become the property of the proprietor of the copyright, and may be recovered by action, with damages for their detention; but no proprietor of copyright commencing after the act shall maintain any action or suit for any infringement thereon before making an entry in the book of registry; the omission of the entry, however, not to affect the title in the copyright, but only the right to sue as aforesaid, and not to prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece may have under the 3 & 4 W. 4, c. 15, although no entry be made of it in the book of registry.

All copyrights are declared to be personal property, and capable of bequest. Actions for offences against the Copyright Act must be brought within twelve months after the commission of the offence, but such limitation not to extend to actions brought for non-delivery of copies of books to the British Museum and the libraries named.

The rights and privileges of the universities of Oxford and Cambridge, and their colleges, the four universities of Scotland, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester, are not affected, nor any subsisting rights, contracts, or engagements. The act extends to the United Kingdom, and to every part of the British dominions.

The 10 & 11 V. c. 95, under the authority of an order in council, allows British works reprinted abroad to be imported into our colonial possessions, provided the colonial legislature or authorities have previously made provision for the protection of the copyright interests of their authors in this country.

### III. INTERNATIONAL COPYRIGHTS.

By 7 V. c. 12, the queen is empowered, by order in council, to direct that the authors, inventors, designers, engravers, or makers of books, prints, articles of sculpture, and other works of art to be defined in such order, and first published in a foreign country, shall have copyright therein within her majesty's dominions, during the period mentioned in the order, which

shall not, however, exceed the period granted under previous acts to works of the same kind first published in this country. The enactments of the Copyright Act (5 & 6 V. c. 45) are to apply to such books, prints, sculptures, &c., unless excepted in the order, and except the enactments for the delivery of books to the British Museum and the other libraries. Authors and composers of dramatic pieces and musical compositions, first publicly represented and performed in foreign countries, to have similar rights.

No person claiming the privileges of this act, whether the author, inventor, engraver, or his executors, or assigns, shall be entitled to its benefits unless their works shall have been registered within a time to be prescribed by the order in council, and according to a form provided in the register book of the Stationers' Company in London: a copy of each book and print to be also deposited there. In case of a book being published anonymously, the name of the first publisher to be sufficient. The provisions of the 5 & 6 V. c. 45, regarding entries in the register book of the company, are to apply to entries under this act, save that the sum to be demanded for making the entry is to be one shilling only.

All copies of books wherein there shall be any subsisting copyright by virtue of this act, or of any order in council, printed or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby *absolutely prohibited to be imported into any part of the British dominions*, except with the consent of the registered proprietor of the copyright, or his agent, authorized in writing; and if imported contrary to this prohibition, the same and the importers thereof shall be subject to a special action on the case, at the suit of the proprietor of such copyright.

The books, prints, &c., received by the officer of the Stationers' Company are to be deposited within one calendar month in the library of the British Museum; but copies of second or subsequent editions are not required unless containing additions or alterations.

The periods of copyright for different foreign works, and for different foreign countries, to be specified by the orders in council; but no order in council is to have effect unless it states that *reciprocal protection is insured*.

Nothing in this act is to prevent the printing, publication, or sale of any translation of any book as to which the author or his assigns may be entitled to the benefit of this act.

No author, composer, inventor, designer, &c., of any work first published in foreign countries, to be entitled to copyright, or any exclusive right to public representation, &c., except under the provisions of this act.

Pursuant to the principles of this statute, a convention for

the establishment of international copyright has been concluded between England and Prussia; which extends to works of literature and the fine arts that may be first published in either of the two states the same privileges in the other state, in regard to copyright, which are enjoyed by similar works first published in such other state. Such works must be respectively registered conformably to the law of the two countries; in England with the Stationers' Company, and in Prussia with the Minister for Ecclesiastical, Educational, and Medical Affairs. It was further agreed that the duties on the exportation of books, prints, or drawings from Prussia shall be reduced. This convention commenced September 1, 1846, the 9 & 10 V. c. 58, having been passed to give effect to its provisions. A similar convention was concluded with Saxony.

Nov. 3, 1851, a convention was concluded with France for the establishment of international copyright, and the 15 V. c. 12, passed for carrying into effect its stipulations. This act repeals s. 18 of 7 V. c. 12, and extends and explains the law as to international copyrights, by providing that by an order in council the authors of books published in any foreign country named in the order may, for any time not exceeding *five years*, prevent any unauthorized translation of their works published either whole or in parts. Similar protection is extended for foreign dramatic pieces first published or represented abroad, against the unauthorized representation of any translation of them in the British dominions: but this is not to prevent the imitation or adaptation to the English stage of any foreign dramatic or musical composition. All articles in newspapers relating to politics may, however, be translated or republished, provided the source of them is acknowledged, unless the authors of such articles have notified their intention to reserve the copyright.

But to entitle foreign authors to such protection, their works must be registered as mentioned p. 177, under 7 V. c. 12, within three calendar months after first publication abroad. They must also notify on the title-page that it is their intention to reserve the right of translation; and such translation must appear within a year after registration, and the whole of such translation within three years. In case of dramatic pieces, the translation sanctioned by the author must be published within three months of registering. Similar conditions are requisite in respect of protected newspaper articles.

The following is the scale of duties (*Order in Council, Jan. 10, 1852*):—On English works republished in France and exported into the United Kingdom, £2 10s. per cwt.; on original French works exported into the United Kingdom, 15s. per cwt.; on French prints and drawings, plain or coloured, exported into the United Kingdom, single, each  $\frac{1}{2}d.$ , or bound or sewn, the dozen,  $1\frac{1}{2}d.$

## IV. COPYRIGHT IN LECTURES AND THE DRAMA

By 5 & 6 W. 4, c. 65, the author or assignee of any lecture has the sole right of *delivering, printing, or publishing* the same : penalty for infringement, forfeiture of copies of the lecture and one penny per sheet. Printers or publishers of newspapers publishing lectures without leave subject to like penalties. Act does not extend to lectures of the delivering of which notice in writing has not been given to two justices living within five miles from the place two days at least before the delivery ; nor to any lecture delivered in any university, college, public school, or foundation.

By 3 & 4 W. 4, c. 15, the author of any *tragedy, comedy, play, opera, farce*, or other dramatic piece or entertainment, composed and not printed or published by the author or his assignee, has the sole right as his own property of representing, or causing it to be represented, at any place of dramatic entertainment in the United Kingdom or British dominions ; and the author of any such production, printed and published within ten years before the passing of this act (June 9, 1833), or which shall be hereafter printed and published, or his assignee, shall from the passing of this act, or from the time of such publication respectively, until the end of *twenty-eight years* from the day of such first publication, or if the author survive at the end of this period, to his death, have the sole right of representation in any place aforesaid ; but not to invalidate the condition of any consent given by the author prior to the act. Penalty for the violation of the rights of the author not less than 40s. for each representation, or to the full amount of the benefit arising from such representations, or the loss sustained by the plaintiff. Actions to be commenced within twelve months after commission of offence.

By 5 & 6 V. c. 45, the provisions of this act are extended to *musical* compositions ; by which the copyright in musical compositions is more extensively protected than that in dramatic pieces under 3 & 4 W. 4. c. 15 ; *Russell v. Smith*, 15 Sim. 181.

## V. ENGRAVINGS, PRINTS, AND SCULPTURE.

The property in *designs, prints, and engravings*, is guaranteed for the term of twenty-eight years from the date of the first publication, which date, with the name of the artist, must be inscribed on the plate ; any person infringing this right by copying, altering, selling, or exposing to sale, without the written consent of the proprietor, signed before two witnesses, any prints, forfeits the plate and copies, and 5s. for every print found in his possession, 8 G. 2, c. 13, s. 1 ; 7 G. 3, c. 38 ; 17 G. 3, c. 57 ; 6 & 7 W. 4, c. 49. To remove doubts on these acts, the

15 V. c. 12, s. 14, enacts that the protection afforded by them extends to prints taken by lithography.

Persons purchasing the *original* plate of the proprietor, may print therefrom without incurring the penalties.

The property in any original *sculpture, model, or bust*, of the human figure, or any animal, is secured for the term of fourteen years; and if the artist survive that time for fourteen years additional, provided the name of the proprietor and date of first publication be inscribed, as in the case of engravings, 54 G. 3, c. 56.

By 13 & 14 V. c. 104, the registrar of designs may, upon application of the proprietor of any *sculpture, model, copy, or cast*, within the protection of the acts, and being furnished with a copy, drawing, or description sufficient to identify the same, register such sculpture, model, &c., for the whole or any part of the term of copyright. After such registration, sculpture, &c., protected against the import or exposure to sale of any pirated cast, but the word "registered" must be marked, and the date of registration.

Voluntary associations, under the name of "Art Unions," had been formed in various parts of the United Kingdom, for the purchase of paintings, drawings, or other works of art, to be distributed by chance among the subscribers, or the raising of sums of money to be distributed by chance and so expended; but doubts having arisen whether such associations were not liable to penalties, as lotteries, little goes, and unlawful games, the 9 & 10 V. c. 48, was passed to legalize their existence. Unions, however, of this description, to be legal, must be incorporated by royal charter, or the deed of partnership or other instrument constituting the association, and their rules be previously approved by her majesty's privy council. The charter or deed constituting the Art Union may be subsequently annulled by the privy council if the Union be perverted from the object of its institutions.

#### VI. DESIGNS IN THE MANUFACTURING ARTS.

These are mainly regulated by 5 & 6 V. c. 100, by which the grant of copyright is given to any new and original design, whether applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other

means, manual, mechanical, or chemical, separate or combined; and it enacts that the proprietor of every such design, not previously published either within the United Kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply the same to any article of manufacture, or to any such substances as aforesaid, provided the same be done within the United Kingdom of Great Britain and Ireland, for the respective terms after mentioned, such respective terms to be computed from the time of such design being registered according to this act: (that is to say,)

In respect of the application of any such design to ornamenting any article of manufacture, contained in the first, second, third, fourth, fifth, sixth, eighth, or eleventh of the classes following, for the term of *three years*;

In respect of the application of any such design to ornamenting any article of manufacture contained in the seventh, ninth, or tenth of the classes following, for the term of *nine calendar months*;

In respect of the application of any such design to ornamenting any article of manufacture or substance contained in the twelfth or thirteenth of the classes following, for the term of *twelve calendar months*.—

Class 1. Articles of manufacture composed wholly or chiefly of any metal or mixed metals.—2. Articles of manufacture composed wholly or chiefly of wood.—3. Articles of manufacture composed wholly or chiefly of glass.—4. Articles of manufacture composed wholly or chiefly of earthenware.—5. Paper hangings.—6. Carpets.—7. Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics.—8. Shawls not comprised in Class 7.—9. Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced.—10. Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the articles included in Class 2.—11. Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches.—12. Woven fabrics, not comprised in any preceding class.—13. Lace,

and any article of manufacture or substance not comprised in any preceding class.

The above act being confined to designs "applicable to the ornamenting of any article of manufacture," its provisions are extended by 6 & 7 V. c. 65, to designs not ornamental, but having reference to some purpose of *utility*, so far as such design shall be for the shape or form of such articles of manufacture, and have been hitherto unpublished; such copyright to be registered, and to exist for three years from the date of registration, but each article must bear the word "registered" upon some part of it, with the date of registration, or the benefit of the act to be forfeited. Any article wrongfully so marked, or advertised for sale as registered, subjects the person so offending to a penalty for each offence of a sum not exceeding £5, nor less than £1. Floor and oil cloths are to be included in Class 6, of carpets. The appointment of a registrar under the provisions of the former act is repealed, and the Board of Trade empowered to appoint a registrar and other officers for carrying both the acts into effect, and to fix their remuneration. The duties and powers of the registrar are then defined; one of the duties being to prepare an index of the titles of the designs not ornamental, to be inspected by any one on the payment of a fee, and after the expiration of the copyright, the designs themselves (which are to be furnished to the registrar at the time of registration) may be inspected and copied upon payment of a fee.

These acts are extended under 13 & 14 V. c. 104, by which the registrar of designs, upon application by the proprietor, may register provisionally for *one year* any design not previously published in the United Kingdom or elsewhere. During the continuance of such provisional registration new designs are protected against piracy under the like penalties given in the Design Act of 1842. The *exhibition* of provisionally-registered designs in any place, whether public or private, in which articles are not sold, or exposed, or exhibited for sale, and to which the public are not admitted gratuitously, or in any place certified by the Board of Trade, to be a place of public exhibition within the meaning of this act; or the publication of any account or description of any provisionally-registered design exhibited or exposed, or intended to be exhibited or exposed, in any such place of exhibition or exposure, in any catalogue, paper, newspaper, or periodical, or otherwise, shall not prevent the proprietor from registering any such designs under the Design Act, at any time during the continuance of the provisional registration, in the same manner as if no such registration, exhibition, exposure, or publication had been made, provided the articles exhibited have attached the words "provisionally registered," with the date of registration. Sale of articles with provisionally-

registered designs, renders null the registration; but the design itself may be sold. Period of provisional registration may be extended by the Board of Trade.

Designs for ornamenting ivory, bone, papier-maché, and other solid substances, may be registered under the Designs Act for three years, and the term be extended by Board of Trade.

The 14 V. c. 8, extends provisions of last act in respect to protection afforded to new inventions exhibited at the Crystal Palace. Public trial of agricultural or horticultural implements, under the direction of the Commissioners, not to prejudice letters patent. Certificate of invention to be granted for provisional registration, and to be registered, and invention to be marked with words "provisionally registered." Provisional registration to confer same benefits as under Designs Act of 1850, and letters patent after granted to be as valid as if invention not registered or exhibited. Proprietors of new designs exhibited to be entitled to benefit of Designs Act, though designs have been previously published elsewhere than in United Kingdom, if not previously *publicly sold or used*. Act of 1850 and this act to be construed together.

By 15 V. c. 6, the provisional registration under the 14 V. c. 8, was to continue in force till Feb. 4, 1853.

#### VII. INJUNCTION IN CHANCERY.

Upon the principle of preventing a civil injury, which a court of equity can only redress, the Court of Chancery interferes to protect the owners of copyright, by issuing an injunction to restrain the sale of pirated copies, and an order to produce an account of such copies printed and sold.

The principle on which the court interferes is *the protection of property*; it requires, therefore, a clear title in the party complaining, as the condition of its interference. It follows from this, that the copyright must be properly vested in the prosecutor, and that the work must be of such a nature that damages might be recovered in a court of common law for pirating it; that is, it must be a work neither of an *immoral, blasphemous, libellous, nor seditious* character. This, however, must be understood of its pervading tenor, not of isolated passages. The general rule appears to be, that any work containing matter against which a public indictment or private prosecution could be sustained is not protected by the law, but may be pirated with impunity, and the parties, if sued for penalties, may adduce the objectionable contents of the work to defeat the action. A remarkable exception this to the general rule of law that none shall take advantage of his own wrong; and its operation is often as remarkable; the effect of the rule being to disseminate more widely that which the law declares unworthy of regard.



Upon these dicta it has been decided that no action can be maintained for pirating a work which professes to be the *amours of a courtesan*, and it is no answer to the objection, that the defendant is also a wrong-doer in publishing them, and that he, therefore, ought not to set up their immorality, 2 *Car. & Pay*, 163. An action cannot be maintained even on a bill for *printing a grossly immoral and indecent work*, 1 *Ry. & M.* 337.

In *Lawrence v. Smith* an injunction to restrain the infringement of a copyright in a work, as to which it appeared doubtful whether it did not tend to impugn the doctrine of the Scriptures, was refused, *Jac.* 471.

A voyage of discovery having been executed, and a narrative of it prepared under the order of the crown, is the property of the crown; but on a bill by the publisher, authorized by the secretary to the admiralty, to publish such narrative, the profits remaining at their disposition, an injunction, restraining the publication by a stranger, was dissolved, 3 *Swanst.* 687.

If the right or infringement of copyright be disputed in *fact*, the court will sometimes direct an issue to be tried at common law, and finally sustain or dissolve the injunction according to the result of that trial.

#### VIII. PREROGATIVE COPYRIGHTS.

The copyright of certain works is exclusively vested in the crown, for different reasons. 1. The queen as the executive magistrate, has the right of promulgating to the people all acts of state and government: this gives her the exclusive privilege of printing, at her own press, or that of her guarantees, all acts of parliament, proclamations, and orders of council. 2. As head of the church, she has a right to the publication of all liturgies, and books of divine service. 3. She has a right, by purchase, to the copies of such law books, grammars, and other compositions, as were compiled or translated at the expense of the crown. And upon this last principle the exclusive right of printing the translation of the *Bible* is founded. 4. And, lastly, almanacs have been said to be prerogative copyrights, either as things derelict, or else as being substantially nothing more than the calendar prefixed to the liturgy; but the patent for this has been declared void, and prerogative copyright may be said generally to rest on doubtful grounds.

The most important of these legal copyrights is that of the Holy Scriptures. In England, the exclusive right of printing Bibles is enjoyed by the queen's printer, concurrently with the two universities; in Ireland, the monopoly of the queen's printer is shared with Trinity College; in Scotland, the whole was in the hands of the queen's printer till 1838, when the patent expired, and the right of printing was vested by the crown in a board of commissioners.

Any infringement of the copyright of works vested in the universities of England and Scotland, or Trinity College, Dublin, or the Colleges of Eton, Winchester, and Westminster, subjects the piratical copies to forfeiture, and a penalty per sheet.

#### IX. NEWSPAPER PROPRIETORS AND PRINTERS.

By 6 & 7 W. 4, c. 76, a separate die is to be used by each newspaper, and the title to be printed on supplements, and publishing supplement without newspaper, penalty £20. Declaration to be made of the title, printer, publisher, and principal proprietors, prior to the printing of a newspaper; if false or defective, a misdemeanor, or printing without such declaration, penalty £50. Titles of newspapers and names of printers and publishers to be entered in a book open to inspection. Copies of newspapers to be delivered to the stamp-office on penalty of £20, and may be produced in evidence. Names of printer and publisher, place of printing, day of the week, month, and year of publication, to be printed at the end of every paper and supplement; {penalty £20. Printers, &c., of newspapers not to supply others with stamps. Discovery of proprietors or printers may be enforced by bill.

The description of a newspaper under 6 & 7 W. 4, c. 76, is partly repealed, and the 16 & 17 V. c. 71, provides "that no paper containing any public news, intelligence, or occurrences, shall be deemed to be a newspaper within the meaning of the said act, or of any act relating to the stamp duties on newspapers, unless the same shall be published periodically, or in parts or numbers at intervals not exceeding 26 days between the publication of any two such parts or numbers."

To prevent the dispersing of papers of an *irreligious* or *sedition character*, the 39 G. 3, c. 79, requires that the name of every printer, type-founder, and maker of printing-presses, shall be entered with the clerk of the peace, under a penalty of £20. Also, every person selling types or presses must, if required by a justice of the peace, give an account to whom they are sold.

By 1 W. 4, c. 73, securities may be demanded to the amount of £400 or £300 to secure the payment of any *damages and costs* that may be incurred in an action for libel published in any newspaper.

By 2 V. c. 12, the printer of every paper or book intended for publication, is required to print upon the front of the same, if printed on one side only, or upon the first or last leaf, of every paper or book consisting of more than one leaf, his name, place of abode, and business; penalty for omission £5, and the like penalty for dispersing any such publication without the imprint: exceptions in favour of the presses at the universities. But no action for penalties can be instituted except in the name

of the Attorney or Solicitor-General for England, or the Queen's Advocate in Scotland.

In *Bensley v. Bignold*, it was decided a printer cannot recover for labour or materials used in printing any work, unless he has affixed his name to it, pursuant to the act, 5 B. & A. 335. An action for work and labour cannot be brought for printing a work distributed weekly, as a *newspaper*, unless the printer have complied with the provisions of the statute, 8 Taunt. 142.

By the custom of trade, a printer is not entitled to recover for printing a work until the *whole is completed* and delivered, 1 Taunt. 137.

By 16 & 17 V. c. 63, a duty of one penny was chargeable on any newspaper printed on one sheet of paper containing a superficies not exceeding 2295 inches. A supplement published with any stamped newspaper, such supplement being printed on one sheet of paper only, and together with such newspaper containing in the aggregate a superficies not exceeding 2295 inches, exempt from stamp duty. Any other supplement to any such stamped newspaper, not chargeable with any higher stamp duty than one halfpenny, provided it does not contain a superficies exceeding 1148 inches. And any two supplements to any such stamped newspaper not chargeable with higher duty than one halfpenny on each, provided each of such supplements be printed on one sheet of paper only, and that they contain together a superficies not exceeding in the aggregate 2295 inches. The superficies in all the aforesaid cases to be one side only of a sheet of paper, and exclusive of the margin of the letter-press.

In 1855 the penny duty on newspapers was abandoned; and under 18 V. c. 27, newspapers, except for the purpose of free transmission by the post, need not be printed on paper stamped for denoting the duty payable. Periodical publications printed on stamped paper denoting the duties are entitled to the same privileges of free transmission and retransmission by post as newspapers, subject to like regulations as to size, &c. Periodicals must be posted within fifteen days after publication. If not posted in conformity with the act, subject to the letter rates of postage. A periodical is defined to include a newspaper, and every printed literary work published periodically, or in parts or numbers at intervals not exceeding thirty-one days,

## CHAPTER XVI.

### *Patentees and Inventors.*

A RIGHT of *patent*, or the exclusive privilege of making and disposing of a new invention for the period of *fourteen* years, is secured by the 21 Jac. 1, c. 3, and most probably it was this

statute which suggested to the Legislature the first law for the limitation of copyright.

By 5 & 6 W. 4, c. 83, amended by 2 & 3 V. c. 67, an attempt was made to obviate some of the defects of the patent laws, and better to secure the rights of inventions and discoveries. One hardship of the former system was, the destruction of all right to a patent which resulted from an inadvertent claim put in to any part of an invention that might not actually be new, although that circumstance should be unknown to the inventor; and even although the part claimed should be a small and unessential portion of the new invention. This defect was obviated, and a patentee who finds he has been anticipated in some portion of his invention, may disclaim that portion, and still retain his exclusive privilege in the remainder. If a patentee have reproduced some old invention, believing himself to be the inventor, a power was vested in the crown to continue the patent to the patentee, when it appears that the invention had not been publicly and generally used. A patentee is protected from vexatious actions questioning the validity of his patent, the certificate of the judge who tried one action operating as a bar to future suits. Lastly, an important advantage was given by the power vested in the crown, of extending, on the recommendation of the privy council, the term of a patent from fourteen to twenty-one years. Under the old law a valuable patent often expired just about the time the difficulties attending its first introduction had been surmounted, and it was beginning to be profitable to the inventor.

In 1852 the patent laws were further amended, the facilities for obtaining letters patent for inventions extended, and the law respecting them materially altered, by 15 & 16 V. c. 83. Under this act a commission is constituted, consisting of the lord chancellor, master of the rolls, the attorney and solicitor-general for England, the attorney and solicitor-general for Ireland, and the lord advocate and solicitor-general for Scotland for the time being, with such other persons as her majesty may appoint from time to time; a commission of whom three may act, the lord chancellor or the master of the rolls being one. The commission is empowered to make regulations, which are to be laid before parliament, and they are required to report to parliament annually.

The act provides that every petition for the grant of letters patent, and the declaration required to accompany such petition, shall be left at the office of the commissioners; and there shall be left there with a statement in writing (the provisional specification) signed by or on behalf of the applicant, describing the nature of the invention. The application is then to be referred to one of the law officers of the crown, who is at liberty to call to his aid such scientific or other person as he may think fit,

and to cause remuneration to be paid to such person. The law officer, if satisfied, may give a certificate of allowance, and thereupon provisional protection is extended to the invention for six months. The inventor, however, may deposit in lieu of a provisional specification a complete specification, and such deposit will confer for six months the like rights as letters patent, but will not invalidate letters patent granted to the first inventor. The letters patent must be taken out before the expiration of the provisional protection, or the inventor will lose his right to them. They are to be valid for the whole of the United Kingdom, the Channel Islands, and the Isle of Man, but fees will have to be paid for recording the patent in the court of chancery in Scotland. The commissioners are to cause applications to be advertised, also oppositions and protections. Letters patent for foreign inventions are not to continue in force after the expiration of the foreign patent; nor are patents for British inventions to prevent the use of such inventions in foreign ships resorting to British ports, except the ships of foreign states in whose ports British ships are prevented from using foreign inventions.

The act further provides that the commissioners are to cause indexes to be made of specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter filed, which may be printed and published; and a register of patents, and also a register of proprietors are to be kept, to be open at convenient times to the inspection of the public under regulations.

Prerogatives of the crown saved in respect of the grant of letters patent. If letters patent be destroyed or lost, other letters patent may be issued. Specifications to be filed instead of being enrolled. In case of infringements, courts of common law may grant injunctions. Account of salaries, fees, and compensations to be laid before parliament.

The fees payable, which are enumerated in the schedule, have been considerably reduced. Provisional protection for six months may be had for £15; the letters patent will cost £10 more, making £25. Then £50 additional is payable at or before the expiration of the third year, and £100 more at or before the expiration of the seventh year, making £175 in all. But these payments are not to do away with the necessity of paying to the law officers of the crown, in cases of opposition and disclaimer, and memoranda of alterations, such fees as may be appointed by the lord chancellor and master of the rolls, and of reasonable sums for office copies of documents.

Parts of sections 28 & 33 of the 15 & 16 V. c. 83, which required an extra copy of drawings to be left with a specification, are repealed by 16 & 17 V. c. 115. By s. 2, copies of provisional specification are to be open to public inspection at the commissioners' office. A copy of every specification under

the hand of the patentee or applicant to be left at the office. Lord Chancellor, in certain cases, may seal letters patent after the expiration of provisional protection. Doubts are removed by s. 7 respecting the making and sealing of new letters patent for a further term.

The 16 V. c. 5, substitutes *stamp duties* for fees on passing letters patent, and empowers the commissioners to purchase for public use the indexes of the 15,000 specifications prepared by Mr. Woodcroft. The following is the schedule of the stamp duties made payable in lieu of the sums under the act of 1852:—

	£	s.	d.
Petition for grant of letters patent . . . . .	5	0	0
Certificate of record of notice to proceed . . . . .	5	0	0
Warrant of law officer for letters patent . . . . .	5	0	0
Sealing of letters patent . . . . .	5	0	0
Specification . . . . .	5	0	0
Letters patent, or a duplicate thereof, before the expiration of the third year . . . . .	50	0	0
Letters patent, or a duplicate thereof, before the expiration of the seventh year . . . . .	100	0	0
Certificate of record of notice of objections . . . . .	2	0	0
Certificate of every search and inspection . . . . .	0	1	0
Certificate of entry of assignment or licence . . . . .	0	5	0
Certificate of assignment or licence . . . . .	0	5	0
Application for disclaimer . . . . .	5	0	0
Caveat against disclaimer . . . . .	2	0	0
Office copies of documents, for every ninety words . . . . .	0	0	2

The two main conditions of a legal patent are, *first*, that the thing in favour of which it is granted must be a new, useful, and original invention; *secondly*, the patentee must furnish so clear a specification of it, that the public may be able to have the benefit of it as fully and as cheaply as the patentee himself at the end of the term, during which he is rewarded for his ingenuity by having the sole making of it. A failure in these points renders the grant of a patent void. Hence, if the description, plan, or model of any new invention be so obscure as not to be intelligible, at least to those in the same trade or manufacture, the patent is illegal, and cannot be maintained. The specifications, under the hand and seal of the patentees, are preserved in an office for public inspection.

A patent may be granted for an *addition* to an old invention, *Hornblower, v. Boulton*, 8 T. R. 5.

A patent cannot be granted for a philosophical *principle only*, neither practically organized, nor capable of being so; but a patent for a machine *improved* by a philosophical principle, though the machine existed before, is good, 8 T. R. 95; 2 H. B. 463.

A patent is void if granted for an article which has been publicly vended by the patentee, though only for four months before. So, too, if the patentee say that by one process he can produce three things, and fail in any one of them. Also, if the specification direct the same thing to be produced several different ways, or by several different ingredients, and any one of them fail, 1 *T. R.* 602. Lastly, a patent is void, if it be for several distinct inventions, and any one of them fail of originality.

## CHAPTER XVII.

### *Landlords, Tenants, and Lodgers.*

LANDLORD is he of whom land or tenements are taken.

*Tenant* signifies one that holds or possesses land or tenements by any kind of right, either in fee for life, for years, or at will.

A *lodger* is one who occupies an apartment, hired in the house of another.

*Net-rent* is a sum to be paid to the landlord, clear of all deductions for rates or taxes.

*Tenure* is the terms or conditions, according to which lands, tenements, or lodgers are holden.

The law between householders and lodgers is, in almost every respect, the same as between landlords and tenants; all therefore, that will be subsequently stated, relative to fixtures, notice, and payment of rent, applies equally to both descriptions of tenure.

### I. LEASES.

A *lease* is a conveyance, in consideration of rent or other recompense, for a specified period, of certain rights or interests in a possession, from the *lessor*, the person granting the lease, to the *lessee*, or person to whom the lease is granted.

By the common law, all persons may grant leases for any term less than their own respective interests. To grant leases for the *whole term* would be more properly an assignment than a lease.

A tenant in tail may make leases to enure for twenty-one years, or three lives, to bind his issue in tail, but not those in remainder or reversion. Also husbands seized in right of their wives may make leases for the same period, provided the wife join in them.

Leases made to aliens are void, except the lease of a house or shop, for years for residence, or trade to a merchant.

A lease may bear date as far back as the parties please, but

not on a day *subsequent* to its execution. It must be in *writing*, if not longer than three years, and must be read by or to the parties, if required; it must be signed and sealed by them, or their agents properly authorized, and must be delivered either by the lessor or his attorney, in the presence of one or two witnesses. It takes effect from the day of delivery, not from the date, *Steele v. Mant*, 4 B. & C. 272.

A lease generally contains *covenants*, or mutual stipulations by the landlord and tenant; on the part of the landlord usually only one direct covenant, namely, for the quiet enjoyment of his premises by the lessee; on the part of the tenant, the covenants in ordinary leases are, to pay rent and taxes; to repair; against carrying on *offensive* trades; and to insure; with a proviso for re-entry in case of non-performance of any of these stipulations.

In *husbandry leases* a covenant is always implied, though not expressed on the part of the tenant, that he will use the land demised to him in a husband-like manner, and not unnecessarily exhaust the soil by neglectful or improper tillage: but in such leases it is more usual to insert a special covenant, as to the mode of cultivation.

If a lessee do not deliver up possession at the expiration of the lease, he is of course liable to rent; and if he be allowed to retain possession without any new contract, he is deemed a tenant by sufferance, at the same rent as he had been previously paying; and on the landlord's acceptance of any sum for rent accruing after the termination of the lease, the tenant may hold the premises from year to year, till half a year's notice has been given him.

A lease may be *assigned* over for the *whole* or *part* of the term; the last, however, is properly only an *under-lease*; the difference between the two is, that in an assignment the assignee is bound to observe the covenants in the original lease; but an *under-lessee* is tenant to the lessor only, and has nothing to do with the terms of the original lease, further than his possession may be affected by the observance of them by the lessor.

Lastly, leases may be *forfeited*. 1. By alienation, or when the tenant grants to another a greater estate in the premises than he has himself. 2. If the lessee commit felony, or any act that, in a court of record, amounts to a forfeiture of his estate. 3. By waste, as pulling down houses, suffering buildings to decay for want of necessary repairs, tearing up floors or doors, or destroying the timber, rabbits in a warren, fish, &c. 4. By the tenant ceasing to reside on the premises. 5. By non-payment of rent. In all these cases of forfeiture, the landlord has a power of re-entry, and that, in many instances, as we shall hereafter explain, by a very summary procedure.

Under the 8 & 9 V. c. 124, abbreviated forms of leases have



been given, which are required to be taxed, not according to their *length*, but the skill, labour, and responsibility involved in their preparation.

Leases in general require either an *ad valorem* stamp or the common deed stamp, without which the instrument cannot be given in evidence.

## II. FIXTURES, REPAIRS, RENT, AND TAXES.

Whatever is fixed to the soil, or out-house, or fold-yard wall, so as to become a part thereof, cannot be removed, and will, at the expiration of the lease, belong to the lessor; but a tenant may remove what he has placed for the convenience of his *trade*, as engines, counters, brewing vessels, &c., provided he does it during the continuance of his term, and has not expressly covenanted to the contrary. Erections for the purpose of farming and agriculture do not come under the exceptions with respect to *trade*, and cannot be taken down again. Wainscot, doors, floors, and other things, fixed with *nails*, cannot be removed; but chimney-pieces, pier-glasses, cupboards fixed with holdfasts, book-cases, planned and fitted, and wainscot put up with *screws*, may be removed, so that the removal does not cause serious damage to the premises. All fixtures put up by the tenant must be removed *during his term*; otherwise at the expiration of the term they become the landlord's property, *Lyde v. Russell*, 1 B. & Adol. 394.

Upon the characteristics of the fixtures, or goods and chattels which are moveable or not, Mr. Commissioner Fonblanque lately came to the following conclusions in the case of a bankrupt:—Firstly, that such articles as merely rested upon the soil by their own weight, however heavy, were goods and chattels; secondly, that if they were slightly connected one with another, and ultimately with the freehold, yet might be severed without material injury to the freehold, they followed the same rule: thirdly, that articles, though themselves fixed to the freehold by bolts and screws, or nails or pegs, or other similar contrivances, were also goods and chattels; fourthly, that articles mainly sunk in the soil, or built on it, were of the realty, and did not pass to the assignees.

An outgoing tenant should be careful not to leave any ground for an action for *dilapidations*; otherwise a litigious landlord may drag him into an expensive lawsuit, which he has no power to stop or avert. No outlay or improvements made by the tenant during his occupancy will be allowed to set off the landlord's claim; and any amount of damages obtained will carry costs, *Cooke v. Anderson*.

Without an express covenant to the contrary, the tenant is bound to continue the payment of his RENT, though his premises may be destroyed by fire, and the landlord refuse to rebuild

them. But a tenant is not to repair damages by tempest, lightning, or other natural casualty, unless there is a special agreement to that effect between him and the landlord. If a tenant covenant to repair generally, without an express exception, and the premises are burnt down, he is bound to rebuild them, 6 *T. R.* 650.

When a lessor covenants to repair, and neglects to do so, the lessee may repair, and deduct the expense out of the rent.

The land tax, ground rent, and sewers' rate, are taxes chargeable to the landlord; but by the 30 G. 2, c. 2, the occupants of houses are required to pay all levies rated on the premises, and to deduct so much out of the rent as the landlord ought to have paid. But if the rates payable by the landlord are not deducted from the rent of the *current year*, they cannot be deducted, or the amount recovered of the landlord, in any subsequent year. Even if the tenant expressly covenant to pay the rent reserved, "without any deduction whatever," still it has been decided, he may deduct the land tax and ground rent.

The assessed taxes, poor-rates, highway, watch, and lamp rates, are the tenant's own taxes, which he is bound to pay under the penalty of having his goods distrained. Most of the water and lighting companies have, also, in addition to the power of cutting off the supply of water or light, authority to distrain for rates in arrear, in the same manner as landlords for their rent.

Rent is demandable and payable any time between sun-rise and sun-set.

The demand must be made by the landlord, or some person specially authorized by him.

If a landlord in the *middle* of a quarter accept the key of a house, and take possession, he cannot afterwards recover from the tenant for use and occupation, 5 *Taunt.* 518.

### III. NOTICE TO QUIT.

Notice, or warning, is necessary where no *certain* time is fixed as the duration of the tenant's term; for when the tenant holds for a *certain* term no notice is requisite, but he quits on the expiration of his lease, 1 *T. R.* 54.

All demises, where no certain term is mentioned, are held to be tenancies from year to year, which neither party can determine without *half a year's notice*. If, therefore, a man once takes possession of a house, he is bound to retain it for a twelvemonth: and though he may let it to another tenant before that time, the landlord, unless he accept the other tenant, may still look to him for the rent.

The half-year's notice to quit should be so given as to expire on the *same quarter-day* as that on which the tenant took possession. So if a person commence holding at Christmas, and wish to leave at the end of the first year, the notice must be

served on or before Midsummer Day: if a single day beyond Midsummer be suffered to elapse without the notice being given, the tenant may be compelled to hold the house for *two years*, there being no intermediate quarter-day till the following Midsummer, on which he can give notice, so as to leave on the quarter-day on which he entered.

In London, a tenant for *less* rent than 40s. must have a quarter's warning; *above* that sum, half a year.

When the tenancy is for a less period than a year, the notice depends on the letting: thus, if taken by the quarter, a quarter's warning; if monthly, a month's warning; and weekly, a week's warning.

Weekly rent is payable weekly; but if the parties let it run to a quarter, and it is then paid as a *quarter's rent*, it seems the tenure will become a quarterly tenure.

There is no distinction between houses and land, as to the period of notice to quit, 1 *T. R.* 162.

Notice by word of mouth is sufficient, if it can be proved to have been given, and was explicit as to the time of quitting, and absolute and explicit in its requisition to quit.

A parol notice on a parol lease will suffice.

When a house or apartments are taken for a *definite* period, as a week or a month, no notice is necessary, it being understood the parties are to quit at the expiration of that time.

Notice to quit should be served on ~~the~~ party himself, for whom it is intended, or else left with his wife or servant, at the usual place of abode.

When notice is given improperly on either side, as a quarter where a half year is necessary, or up to a wrong time, such improper notice should be objected to as soon as possible. If no objection be made to a notice, though wrongful, within a reasonable time, such notice will be deemed binding on the party accepting it.

Non-compliance with a notice *in writing* subjects the tenant to an action of ejectment, or to the payment of double rent, to be recovered by action of debt, if the notice were given by the landlord, or by distress if given by the tenant.

But notice to quit may be waived, or tacitly withdrawn, by any act or conduct implying a permission on the part of the landlord, and an acquiescence on the part of the tenant, that the tenure shall continue as before. Thus, the receipt of rent for the premises up to a period subsequent to the expiration of the notice will be deemed a waiver, unless it appear to have been accepted merely as a satisfaction for the tenant's subsequent occupation of the premises.

The following is the usual form of notice from a landlord to a tenant:—

Sir,—I hereby give you notice to quit, on or before Christmas

next, [*or any other period or day of the month, according to the tenure*] the house and garden [*or apartment, as the case may be*] you hold of me, at the rent of £10 per annum. Dated the 21st day of May, 1827.

Yours, &c.,

Abraham Newland.

To Mr. George Scott,  
*Sidney Street.*

*Landlord of the said house,  
and garden, or apartment.*

The form of notice from a tenant to a landlord is precisely in the same style and import.

#### IV. RECOVERY OF RENT OR POSSESSION.

For the non-payment of rent on the day it is due, the law has furnished landlords with several methods of recovering it; the chief of which are, 1. By action of law. 2. By ejectment. 3. By distress on the premises. The last is most commonly resorted to, and that of which we shall speak.

Distress is a remedy given by the Legislature to a landlord, by which he is empowered to seize the goods of his tenant on the premises; to sell the same within a certain period, and thus to reimburse himself for the rent in arrear, and the charges consequent on the distress.

In general all chattels found on the premises, whether the property of a tenant or a stranger, may be distrained. But dogs, rabbits, poultry, fish, or things of a wild nature; things on the premises in the way of trade, as horses in a smith's shop, corn at a mill, or cloth and garments at a tailor's shop; the cattle and goods of a temporary guest at an inn (but not carriages or horses at livery); the tools and implements of a man's trade *in actual use*; the books of a scholar, or the axe of a carpenter; wearing apparel, when upon the back; a beast at the plough, or the horse a man is riding upon; a watch in a man's pocket; pawnbroker's duplicates, deeds, writings, or anything unsalable; also loose money: none of these things can be taken by distress. Goods in the hands of a carrier or an auctioneer, to be sold by him on his premises, (1 *Cr. & M.* 380.) or of a principal in the hands of a factor, are privileged from distress; as also those consigned to a wharfinger for sale.

To these heads of things not distrainable may be added all goods in the custody of the law, whether as being already distrained or taken in execution. But in the last case, so long as they remain on the premises, the landlord has a beneficial lien on them.

Nothing can be distrained which cannot be returned in as good a state as when taken; as milk, fruit, and the like.

Distresses must be proportioned to the sum distrained for. If a man take unreasonable distress, as two oxen for twelve pence, he may be heavily fined.

Distress must be had in the *day-time*, and not till the day *after* the rent is due. If made after the tender of arrears it will be illegal; and though the tender be made after the distress, but before it is *impounded*, the landlord must deliver up the distress, and the expenses, if any, must be paid by him.

By 11 G. 2, c. 19, goods *fraudulently* or *clandestinely* conveyed off the premises, to avoid a distress for arrears of rent, may be seized anywhere within thirty days after, unless *bond fide* sold to those not privy to the evasion. Every person *assisting* in such removal or concealment forfeits double the value of the goods, to be recovered by action of debt. If the value of the goods be under £50, two justices, on application from the landlord, and proof of the fraudulent conveyance, may order the parties to pay double the value of the goods, or, on default, be committed to hard labour for six months.

By the 7th section, landlords, with the assistance of a constable, may break open a dwelling-house, oath being first made before a justice of reasonable ground to suspect that goods are concealed there.

It is material to observe, that the remedies under this statute for goods clandestinely or fraudulently conveyed away to avoid distress, extends only to the tenant's *own goods*, and not to those of a *lodger* or *stranger*, 5 M. & S. 38. It is even considered a creditor, with the consent of his debtor, may take possession of the goods of the latter for a *bond fide* debt, and remove them from the premises, if apprehensive of a distress, without being liable to the penalties of the act. It is also important to remark, that the statute applies only when the rent is *actually due*; for the tenant may remove his goods any time previously to the rent-day, and they cannot be followed under the provisions of this act: the rent when due would be a debt from the tenant to the landlord, on simple contract only, to be recovered, like similar debts, by action in a court of law. Further, it is essential to observe, that the presence of a constable is necessary, whenever *force* is resorted to by a landlord following goods fraudulently removed; and a plea in *Rich. v. Woolley* was held bad for not stating such presence.

As regards the liability of persons for *assisting* to remove goods to prevent the landlord from distraining, strict proof is required of being privy to the fraudulent intent of the tenant. Proof of the mere act of assistance is not sufficient. *Brooke v. Noakes*, 8 B. & C. 537.

The place where the distress is deposited in security, or, as it is termed, *impounded*, may be on such part of the premises as is most convenient. But, if the goods distrained are removed, notice must be given of the place where, and such notice contain an inventory of the goods distrained.

The law has provided *summary methods* for recovering pos-

session of land and tenements, under different circumstances, Where a tenant at rack-rent, or at full three-fourths of the yearly value, deserts his premises, being half a year's rent in arrear, without leaving sufficient distress, and though a man is in possession, two justices may, after fourteen days' notice publicly affixed on the premises, put the landlord in possession, and the lease, if any, is afterwards void, 57 G. 3, c. 52; 1 G. 4, c. 87. In the metropolis two justices need not be present, two police constables will suffice, 3 & 4 V. c. 84.

By 1 & 2 V. c. 74, when premises are held at will or for less than seven years, and possession is legally determined, and there is no rent, or the rent is under £20, a constable may give possession after notice and application to a magistrate.

By 2 & 3 V. c. 47 & 67, any constable of the Metropolitan Police Force may stop and detain, until inquiry has been made, all carts and carriages employed in removing the furniture of any house or lodging between the hours of eight in the evening and six in the morning, or whenever the constable has good grounds for believing such removal is made for the purpose of evading the payment of rent.

By Common Law Procedure Act, the 15 & 16 V. c. 76, former procedure in ejectment is abolished, and ejectment to be brought by writ directed to the persons to be ejected by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the writ with reasonable certainty. By consent and by leave of the judge, a special case may be stated according to the practice heretofore used; if not, the claimant may proceed to action in the same manner as in other actions, ss. 168-179.

In the case of landlord and tenant, where half a year's rent is in arrear, and the landlord or lessor has a right to re-enter for non-payment, he may bring writ of ejectment; and on proof that there was not sufficient goods to satisfy distress, he shall recover judgment and execution, but on the tenant paying all rent and costs before trial, the proceedings are to cease. The landlord's former remedies, however, are saved. In ejectment by mortgagee, the mortgagor's rendering the principal and interest in court shall be deemed a full satisfaction, and the court may compel the mortgagee to recover; but this is not to extend to cases where the right of redemption is controverted, or the money due is not adjusted, ss. 210-219.

## V. REPLEVY AND SALE.

A replevy is an action to try the legality of the distress, and meanwhile recover back the goods distrained; as it is a remedy which may involve the tenant in an expensive and protracted lawsuit, it ought to be very cautiously attempted.

If a person is determined to replevy, he must, within five days after the notice given him of the distress, go with two housekeepers to the sheriff's office, or to a person authorized by the sheriff to grant replevies, and enter into a bond, with two sureties in double the value of the goods, to try without delay the right of distraining, and to return the distress in case the right should be determined against him; upon which the sheriff shall direct a precept to one of his bailiffs to restore the goods to the tenant.

On the *sixth* day after the distress, if the goods are not replevied, nor further time allowed by the landlord, at the *request of the tenant*, the goods must be appraised by two sworn appraisers, and sold for the best price that can be got for them; and, after deducting the cost of the distress, appraisement, and sale, leave the surplus, if any, to the owner.

If a sufficient amount is not raised by the first distress, a second distress may issue.

To prevent extortion in distresses for small rents, it is enacted by 57 G. 3, c. 93, that no broker, in levying a distress *under* £20 shall take more than the following sums, on a penalty of treble the amount of the moneys so unlawfully taken:—

	s.	d.
For levying the distress . . . . .	3	0
Man in possession, per day . . . . .	2	6
Appraisement, whether by one broker or more, in the pound . . . . .	0	6

Stamps, the lawful amount thereof. All expense of advertisement, if any such, 10s. Catalogues, sale, commission, and delivery of goods, one shilling in the pound on the net produce of the sale. And the broker is required to give a copy of his charges to the person distrained upon. The provisions of this act are extended by 7 & 8 G. 4, c. 17, to any distress for land-tax, assessed taxes, poor-rates, church-rates, tithes, highway and sewer-rates, or any other rates, assessments, or impositions whatever, where the sum demanded is under £20.

By the Bankrupt Act, no distress for rent, after an act of bankruptcy, can be made for more than a *year's* rent, but the landlord may prove under the fiat for the residue; and the same rule applies in insolvency after assignment to the assignees.

By the 7 Anne, c. 12, the goods of ambassadors and their domestics are protected from distress; but this privilege does not extend to articles of luxury.

It seems that a tenant who holds over after the expiration of his tenancy, cannot maintain an action of trespass against his landlord, who *forcibly* enters; but if the force employed amount to a *breach of the peace*, the landlord is criminally liable, 1 Price, 53.

The landlord's lien for rent on limited tenures is restrained by 7 & 8 V. c. 96, s. 57, enacting that "no landlord of any tenement let at a weekly rent shall have any claim or lien upon any goods taken in execution, under the process of any court of law, for more than *four weeks' arrears* of rent; and if such tenement shall be let for any other term less than a year, the landlord shall not have any claim or lien on such goods for more than the arrears of rent accruing during four such terms or times of payment."

EMBLEMENTS AND FIXTURES.—To lessen the evils of the right to emblements, and of the law relating to growing crops seized under execution, and to agricultural fixtures, the 14 & 15 V. c. 25, provides that when, on determination of leases or tenancies by the death or cesser of interest of landlord, entitled for life, or any other uncertain interest, instead of emblements, the tenant shall continue to hold until the expiration of the current year, and shall then quit upon the terms of his lease or holding, and the succeeding landlord or owner shall be entitled to recover a fair proportion of the rent that had accrued from the death of his predecessor. Growing crops seized and sold under execution to be liable for accruing rent. Tenant may remove buildings and fixtures erected by him on farms, unless landlord elect to take them. Tenant quitting, leaving tithe rentcharge unpaid, landlord or new tenant may pay the same, and recover from the late occupier, as if a simple contract debt.

#### VI. PROCEEDINGS AGAINST LODGERS.

It seems that if householders who let lodgings or apartments with attendance do not keep them in such a state of cleanliness as to be comfortably or wholesomely inhabitable, lodgers may leave them without notice, or liability for rent. For instance, if bugs be found in a bed, even after entering into possession, a lodger is not obliged to stay in a house, 12 M. & W. 52.

A housekeeper has the same power to distrain the goods of his lodger for rent, as a landlord has over those of his tenant, and he may detain the property of his lodger, while on the premises, for rent *in arrear*.

If the housekeeper wish to get rid of his lodger, and he persist in stopping, even after his goods have been taken to the amount of the rent due, the best course to adopt is to serve a written notice, by a person who may be brought as a witness, setting forth that if the lodger does not quit at the expiration of the term mentioned, the housekeeper will demand an advance of double rent, which, if not paid, he shall in his absence from his apartment, shut him out of the house.

If this does not succeed, and the party will neither quit nor



pay double rent, recourse must be had to the following remedy. After the period mentioned in the notice has expired, the housekeeper may enter the lodger's apartments whenever he finds them *open* (for he must not use *force* to open them); he may then take out the window-sashes, remove any of his *own* fixtures or furniture, take the door off the hinges, the lock or fastening off the door, block up the chimney, or do any other act which makes the place comfortless and untenable.

If a lodger absent himself, leaving his apartments locked, and *in arrear for rent*, the most legal way to recover possession is to send for a constable, and in his presence to enter the apartments, and take out the lodger's property, and secure it till a request be made for it. The housekeeper may then take possession of the apartments, and relet them if he thinks fit; and if after giving fourteen days' notice in the *Gazette*, the lodger does not return to claim his property and pay his arrears, the housekeeper may sell the property advertised for the payment of the rent due at the time of taking possession, and the expenses incurred, reserving the goods it was unnecessary to sell, or the surplus money (if any), for delivery to the lodger.

Or 1 & 2 V. c. 74, would probably in many cases give a prompt remedy against untractable inmates.

#### VII. GENERAL REMARKS.

The law allows a landlord to enter a house to view repairs, but if he enter *forcibly* he is a trespasser.

Rent tendered in a lump is a valid tender, it being the receiver's business to count it out and see that it is right.

No goods taken in execution can be removed till the landlord's rent is paid, provided it be *demanded*, and amount to no more than a *year's rent*.

In taking a house it is proper a person should carefully examine the covenants in the lease, and those in the under-lease, if any, or he may possibly discover, when too late, that he is tied down by such restrictions as to render the house unfit for his purpose, or likely to involve him in unforeseen difficulties. He should take care that all arrears of rent, the ground-rent, and all taxes, are paid up to the time he takes possession; for, if they are not, he must pay all arrears, and can only recover them by having recourse to the last tenant.

In purchasing a lease of a *tenant*, care should be taken, by examining the lease and inventory, that fixtures, and other things belonging to the landlord, are not paid for as belonging to the tenant.

A practice, which it is necessary to guard against, has become prevalent, to insert words in leases sufficiently comprehensive to include *trade fixtures*, and such as the law itself, without the lease, would consider the tenant's.

A person taking a house on a *repairing lease*, and undertaking to keep it in repair, and leave it in as good condition as when he entered it, is bound to rebuild or repair it, in case it be destroyed or damaged by fire, lightning, tempest, or other accident.

A person taking a lease ought to obtain a copy of it before it is engrossed on stamps, and carefully consider the terms it embraces.

Regard ought also to be had to the *locality* of a dwelling, whether there are symptoms of damp, as indicated by the paper peeling off, or the walls being discoloured; whether the chimneys are smoky, which may be known by signs about the fire-place, or the smoky appearance of the ceiling; whether it is subject to unpleasant smells from drains, cesspools, &c.; whether there are any nuisances or annoying trades in the neighbourhood, from tallow-melters, soap-boilers, and the noise of steam-engines and manufactories.

Similar cautions are needful in taking *unfurnished lodgings*; for, if the rent of the house be in arrear, either then, or at a subsequent period, the furniture of the lodger will be liable. When the furniture of the lodger has been thus seized, his only remedy is an action against his landlord.

Every lodger should examine the condition of the apartments he takes, with the number of panes of glass cracked or broken, or other things defaced or damaged; for, on quitting the lodging, the landlord may demand satisfaction for what was destroyed before his entrance.

As it is not the policy of the law to encourage *immorality*, a landlord cannot recover for board and lodging furnished to a woman of the town, if he is aware at the time that such is her mode of life, 1 *Carr & Pay*. 347, T. T. 1826.

Lastly, within the limits of the Metropolitan Police, the magistrates have summary power to order compensation, not exceeding £15, for any *wilful* or *malicious damage* committed by tenants in any house or lodging, or to the furniture, on complaint made within one calendar month. They may also deal summarily with cases of *oppressive distresses* by landlords, where the house or lodging, by the week or month, does not exceed the rate of £15 a year, 2 & 3 V. c. 71, ss. 38, 39.

## CHAPTER XVIII.

### *Innkeepers, Licensed Victuallers, and Beer Retailers.*

#### I. INNKEEPERS.

AN inn, as distinguished from a common alehouse, or beer-house, may be described as a house of public entertainment, where provisions and beds are furnished to persons who apply

for them ; although it is called an hotel, tavern, or coffee-house, and is not frequented by stage-coaches or waggons, and has no stable attached to it, yet furnishing the accommodation of lodging and victuals, it comes within the legal description of an inn, and is subject to the same liabilities, *Thompson v. Lacey*, 3 B. & A. 283.

An innkeeper is bound to receive all guests or travellers, and to provide them with necessary food and lodging, or to dress any victuals which they may require, unless he can show a reasonable excuse for his refusal, such as that his house is already full, or the like ; but he is not obliged to allow his guests a particular room. He has no option either to receive or reject guests, and as he cannot refuse to receive guests, so neither can he impose unreasonable terms on them.

If an innkeeper refuse to entertain a guest on tendering him a reasonable price, not only may his house be suppressed, but damages obtained by action, and he may be indicted and fined at the suit of the queen.

It is said that he may be compelled, by the constable of the town or justice of the peace, to receive and entertain such person as a guest ; and this, whether he has a sign before his door or not, if he make it his general business to entertain travellers, 1 *Hawk*, c. 78. He may also be compelled to receive a horse, though the owner does not lodge in the house ; but it has been ruled that an innkeeper is not bound to furnish travellers with post horses, though he has a licence, and has horses at liberty in his stable.

An innkeeper is bound to protect the property of his guests, and is accountable for all the goods placed within his house, whether delivered expressly into his keeping or not ; it is sufficient, if they be at the inn, to charge him.

If a guest be robbed, he is bound to restitution, unless it appear the guest was robbed by his own servant, or companion ; and it is no plea for the innkeeper, that at the time the theft was committed, he was sick or insane. Like a carrier, his liability can only be limited by express agreement or notice. Therefore, where a package, part of a traveller's luggage, was placed by his desire in the commercial room of an inn, from which it was stolen, the innkeeper was held liable, though it was proved to be the custom of the house to deposit all luggage in the bed-rooms of guests, *Richmond v. Smith*, 8 B. & C. 9.

But an innkeeper is bound to answer only for those things which are *within* his house. If, therefore, he refuse, because his house is full, to receive a person, who thereupon says he will shift, and then is robbed, the innkeeper is not liable. Nor is an innkeeper in any case liable for goods, unless the owner be a *guest*, that is, a traveller or passenger at the inn.

A man, by putting up a horse, though he never enter the inn

himself, becomes thereby a guest. If one contract for lodging for a set time, and do not eat or drink there, he is no guest, but a lodger, and so not under the innkeeper's protection; but if he eat, drink, or pay for his diet, it is otherwise.

In many inns and hotels, it is a common practice for the innkeeper to pay the laundresses' and other persons' bills on behalf of their guests, as a matter of course; but by *ordinarily* discharging such bills, innkeepers render themselves liable for the payment of any undischarged bills of the same kind, *Stark. Rep.* 171.

*The Reckoning.*—An innkeeper may detain the horse which eats, till payment. But a horse committed to an innkeeper may be detained only for his own meat, and not for the meat of his guest, or of any other horse.

A livery-stable keeper cannot detain a horse for his keep, except by special agreement; his remedy is by action against the owner.

By 24 G. 2, c. 40, which was intended to discourage tippling, by limiting petty credit to the poorer classes, an innkeeper cannot recover any debt or demand for spirituous liquors, unless of the amount of 20s. or upwards, and contracted for at one time, 4 B. & A. 241. Therefore an innkeeper cannot recover charges for spirits, unless each item is for spirits furnished to the amount of 20s., although forming items in a dinner bill, or the spirits be mixed with water, 3 Taunt, 226.

If several persons meet at an inn or tavern and dine there without a special agreement with the inn or tavernkeeper, each is liable for the whole expense of the dinner, unless previous notice had been given that they came by the invitation of others, in which case they are not liable for their own share, for the credit was given to the inviters. In the cases of a regimental mess and a public dinner, each person is liable for his own share, for their manner of dining is notice to him who provides the dinner.

If an innkeeper refuse to give in the reckoning in *writing*, or otherwise, specifying the number of quarts or pints, or sells in other than standard measure, he cannot, on default of payment of such reckoning, detain any goods or things belonging to the person from whom such reckoning is due.

Contrary to the dictum of Judge Eyres, it has been lately decided that an innkeeper cannot detain the *person* of his guest, or take off his clothes, in order to secure the payment of his bill. *Sunbolf. v. Alford*, 3 M. & W. 248.

An innkeeper may detain, for his keep, a horse left with him, to be kept, though the person who left him had no right to him, and though such person did not stay in the inn.

A horse taken away before the reckoning is discharged may be pursued and brought back.

An innkeeper has no right, by general custom, to use a horse detained for his meat, nor to sell him. But, by the special custom of London and Exeter, he may take a horse, who has eaten out his price, to his own use, on the appraisement of four neighbours.

*Billeting of Soldiers.*—By the annual Mutiny Act, all keepers of inns, livery-stables, alehouses, victualling-houses, wine-sellers by retail, and dram-sellers, are obliged to receive all officers and soldiers quartered, or billeted, upon them. But persons having more billeted in proportion than their neighbours, may be relieved, by complaint to a justice. Persons holding canteens, distillers, shopkeepers whose principal dealing is not in spirits, keepers of taverns only, being free of the Vintners' Company in London, are exempt from receiving the military, 5 W. 4, c. 6.

Innkeepers refusing to accommodate the military, as provided by the act, may be fined, not above £5, nor less than 40s. Officers quartering the wives, children, or servants of any of the military, without consent of the owner, may be fined 20s. Where any horse or dragoon is quartered on a person having no stable, he may be relieved on complaint to a magistrate, and the payment of a composition.

Soldiers while on the *march* may require the parties on whom they are quartered to furnish one hot meal per day, consisting of not exceeding one pound and a quarter of meat, previous to being dressed, one pound of bread, one pound of vegetables, two pints of small beer, vinegar, and salt, for which they shall charge 10d. The allowance for hay and straw per day, for one horse quartered, is 10d. Innkeepers giving soldiers on march, money, in lieu of diet and small beer, may be fined from 40s. to £5. Innkeepers allowed to provide the military, when stationary, with fire, candles, vinegar, salt, and utensils to dress their victuals, on receiving for the same one halfpenny per diem. Every officer, on receiving the pay, or subsistence money, must give notice to the persons on whom the military are quartered, so that their claims may be liquidated.

## II. LICENSED VICTUALLERS.

It will be seen from the last section, that every alehouse is not an inn, nor every inn an alehouse; but if an alehouse lodges and entertains travellers it is also an inn; and if an inn uses the common selling of ale it is an alehouse. Having stated the liabilities of innkeepers, as established by the common law and legal decisions, we come to that numerous class of publicans or alehouse-keepers who are regulated by statute, and annually receive a licence from justices of peace to retail beer to be drunk on the premises, or elsewhere. They are distinguished from the *retailer* of beer, by their magistrates' licence being compatible

with a license to sell wine and spirits, which the licence of the retailer, granted by the commissioners of excise, is not. In some parts of the country the magistrates have refused to license victuallers whose principal or sole occupation is the vending of *spirits*; and as they could not obtain a licence from the excise to retail spirits without having first obtained the magistrates' licence to sell beer, their business was destroyed. An appeal was made to the quarter sessions, but the decision was confirmed. The reason assigned by the magistrates was, that the original intention of licensing places was to supply *victual and lodging* to travellers and strangers, and hence the law always recognised them as "victualling-houses," and that such places as "dram-shops," not coming under the design of the law, they were justified in thus refusing them licences. That such power is vested in licensing magistrates there seems little doubt; and its existence shows the precarious tenure of good behaviour on which the prosperity of the "*gin palaces*" of the metropolis and elsewhere depends.

The general licensing act is the 9 G. 4, c. 61, which provides that there shall be yearly held a special session of justices for the purpose of granting licences; such meetings to be held in the counties of Middlesex and Surrey within the first ten days of the month of March, and in every other county on some day between the 20th of August and 14th of September.

*Notice of General Meeting.*—Within every division, twenty-one days before the annual licensing meeting, a petty session of justices to be held, a majority of whom shall fix the day and hour for holding the general annual meeting, and shall direct a precept to the high constable, requiring him, within five days after the receipt thereof, to order the petty constables to affix on the door of the church, chapel, or other public place in their districts, a notice of such annual meeting, and to give to or leave at the dwelling-house of each justice acting for the division, and of each person keeping an inn, or who shall have given notice of his intention to apply for a licence to keep an inn, a copy of such notice, s. 2. The annual meeting may be adjourned; but the adjourned meeting is not to be held on any of the five days next following the adjournment; and every adjournment to be held in the month of March in Middlesex and Surrey, and in August or September in every other county, s. 3.

*Transfer of Licences.*—At the annual meeting, justices to appoint not less than four, nor more than eight special sessions, to be held as near as possible at equidistant periods, for the purpose of transferring licences, s. 4. Notice of holding any adjourned annual meeting, or of any special session for the transfer of licences, to be given in the same manner and to the same parties as mentioned in the second section, s. 5.

*Justices Disqualified.*—No justice concerned in the trade of a

common brewer, distiller, maker of malt for sale, or retailer of malt, or any exciseable liquor, shall act or be present at any annual licensing meeting, or adjournment, or special session for transferring licences, or take part in the adjudication upon any application for a licence, or upon an appeal; nor in the case of licensing any house of which he is owner, or agent to the owner, or of any house belonging to any common brewer, maker of malt, &c., to whom he shall be, either by blood or marriage, the father, son, or brother, or with whom he shall be partner, in any *other trade*,—in any of these cases knowingly or wilfully to act, subjects to a penalty of £100. But disqualification does not arise where a justice, having no *beneficial interest* in a house licensed, or about to be licensed, holds only the legal estate therein as trustee, s. 6. When, in any liberty, city, or town, two qualified justices do not attend, the county justices may act, s. 7. These powers given to the county justices not to extend to the Cinque Ports, s. 8. Questions respecting licences to be determined, and licences to be signed, by a majority of the justices at the meeting, s. 9.

*Application for Licence.*—Persons intending to apply for a licence to a house *not before licensed*, to affix a notice on the door of such house, and on the door of the church or chapel of the parish, and, where there shall be no church or chapel, on some other conspicuous place within the parish, on three several Sundays, between the 1st of January and the last day of February in the counties of Middlesex and Surrey, and elsewhere between the 1st of June, and the last day of July, at some time between the hours of ten in the forenoon and of four in the afternoon, and shall serve a copy of such notice upon one of the overseers of the poor, and upon one of the constables or peace officers of the parish, within the month of February in the counties of Middlesex and Surrey, and elsewhere within the month of July, prior to the annual meeting; such notice to be in a legible hand, or printed, and signed by the applicant, s. 10.

*Notice to Transfer Licence.*—Persons desirous of transferring a licence, and intending to apply to the next special sessions, must, five days previous, serve a notice on one of the overseers and one of the constables of the parish. Persons hindered by sickness, or other reasonable cause, from attending any licensing meeting, and proof thereof adduced *on oath*, may authorize another person to attend for them, s. 11. Licences to be in force in Middlesex and Surrey from the 5th of April; elsewhere from the 10th of October, for one whole year, s. 13.

*Provision for Death or other Contingency.*—If any person licensed shall die, or become incapable, or a bankrupt, or insolvent, or if he or his heirs, executors, or assigns, shall remove, or neglect to apply for a continuation of his licence; or if any inn shall be pulled down for any public improvement, or be

rendered, by fire or other casualty, unfit for the reception of travellers; in these cases, the justices at special session may grant to the heirs, executors, or assigns, or to any new tenant, a licence; or if the house be pulled down or rendered unfit, a licence to sell in some other convenient house may be granted; provided such licences shall continue only in force to the end of the year; and in case of removal to another house, notice must be given on some Sunday within six weeks before the special session, in the manner and form before described in section ten, s. 14.

*Fees for Licences.*—The clerk of the justices at any annual meeting, or special session, may lawfully receive from every person to whom a licence is granted for trouble and *all expenses* the following sums:—

	s.	d.
For constable or officer serving notices . . .	1	0
For clerk of justices for licence . . .	5	0
For precept to the high constable and notices to be delivered by the petty constable . . .	1	6

Clerks demanding or receiving more than these fees to forfeit £5, s. 15.

No sheriff's officer, or officer executing the process of any court of justice, qualified to hold or use any licence under this act, s. 16.

*Penalties.*—Any person *without a licence* selling or exchanging, or for valuable consideration disposing of any exciseable liquor by retail, to be consumed in his house; or *with a licence*, and so doing in his house, not being the house specified in the licence, shall for every offence, on conviction before one justice, forfeit not exceeding £20, nor less than £5, with costs. But the penalty not to attach in case of death or insolvency, and sale by the heir or assigns prior to the next special sessions, s. 18. Every licensed person shall, if required, sell all liquors by retail, (except in quantities less than a pint,) by the gallon, quart, pint, or half-pint, sized according to the standard; in default thereof, to forfeit the illegal measure, and pay, not exceeding 40s. with costs, to be recovered within thirty days before one justice, s. 19. In cases of riot, or probability of riot, houses licensed in the neighbourhood may be closed by the order of two justices, s. 20. Any person convicted of a *first offence*, before two justices, against the tenor of his licence, to forfeit not exceeding £5 with costs; guilty of a *second offence* within three years of the first, to forfeit not exceeding £10 with costs; and guilty of a *third offence* within three years, to forfeit not exceeding £50 with costs; or the case, in the last instance, may be adjourned to the petty sessions, or the annual meeting, or the general quarter sessions and if the offender is found guilty by a JURY, he may be fined £100, or adjudged to forfeit his licence,



or both, and rendered incapable of selling any exciseable liquor in any inn kept by him for *three years*, s. 21.

*Witnesses and Costs.*—Proceedings at the session, in certain cases, may be directed by the justices to be carried on by the constable, and the expenses defrayed out of the county rates, s. 22. *Witnesses* refusing to attend, without lawful excuse, may be fined not more than £10, s. 23. Penalties against justices may be sued for in any court in Westminster; a moiety to the queen, and a moiety to the party suing, s. 24. Penalties adjudged by justices may be recovered by distress, or the party imprisoned one, three, or six calendar months, s. 25. Justices may award one-half the penalty to the prosecutor, s. 26. Appeal may be made to the quarter sessions, s. 27. Justices, in case of appeal, may bind parties to appear, s. 28. Court may adjudge costs, s. 29. Actions against justices or constables to be commenced within three calendar months, s. 30. Conviction to be on oath of one or more witnesses, s. 31. Form of conviction, s. 32. Convictions before justices to be returned to the quarter session, and filed of record, s. 33. Convictions not removable by *certiorari*, s. 34.

The Licensing Act does not affect the two universities, nor the time of licensing in the city of London, nor the privileges of the Vintners' Company (except as to persons who have obtained their freedom by redemption only), nor any law of excise; nor prohibit any person selling beer in booths in fairs, as before allowed, s. 36.

*Definitions.*—The 37th and last section defines that the word "inn" shall include any inn, alehouse, or victualling-house; and the words "inn, alehouse, or victualling-house," include all houses in which is sold, by retail, any exciseable liquor, to be drank or consumed on the premises; and the words "exciseable liquor," include any ale, beer, or other fermented malt liquor, sweets, cider, perry, wine, or other spirituous liquor, which is now or shall be hereafter charged with duty, either by customs or excise.

*Music and Dancing.*—By 25 G. 2, c. 36, the keeping, within the cities of London and Westminster, and twenty miles thereof, without licence from the quarter sessions, any house, garden, or place for *public dancing, music, or other public entertainment*, is prohibited under a penalty of £100 on the keeper, and the house to be deemed disorderly. Constables or other persons authorized by warrant, may enter such place, and seize any person found therein, in order to their being dealt with according to law. Places licensed are directed to have an inscription over them, setting forth that they are licensed pursuant to the statute; but places licensed by the crown, or lord chamberlain, are excepted from the act. The magistrates of Middlesex having been long divided in opinion on the interpretation of the acts referring to

theatres and to licences for music, dancing, and other entertainments, took the opinion of eminent counsel on the construction of the statutes. In consequence of the opinion given, the magistrates determined, at the sessions, Oct. 7, 1852, in future not to insert in the licences to be granted under 25 G. 2, c. 86, "the words 'or other public entertainments of the like kind,' but will in all cases specify the particular entertainment which may be given." A proposition was also made to alter the standing orders, in accordance with the new regulation; and that, in future, applicants give fourteen days' notice, instead of seven as heretofore, to the clerk of the peace, and to the clerks of petty sessions, of their intention to apply.

Persons licensed for the sale of wine, spirits, or beer, suffering *unlawful societies or clubs* to meet in their houses, forfeit their licences, under 57 G. 3, c. 19; 39 G. 3, c. 79.

The granting of certificates to dealers in provisions in Scotland, for the sale of exciseable liquors, is regulated by 16 & 17 V. c. 67.

*Hotels and Spirit Shops.*—The commissioners and officers of excise are prohibited from granting to the keepers of hotels and spirit shops a licence for the sale, by retail, of any *exciseable liquor*, to be consumed on the premises, unless the magistrates' licence for the sale of beer has been previously obtained. All excise licences granted contrary to this provision are void, and the parties obtaining them, and retailing wines, spirits, or any exciseable liquors, would be liable to the penalties for selling without licence, as was recently the case of the hotel-keepers of the metropolis.

*Constables and Closing Hours.*—Any victualler or keeper of any house, shop, room or other place for the sale of liquors, whether spirituous or otherwise, knowingly harbouring or entertaining any constable belonging to the metropolitan police force, during his hours of duty, is liable to a fine not exceeding £5, 10 G. 4, c. 44, s. 6. No licensed victualler or other person to open his house within the Metropolitan Police District for the sale of wine, spirits, beer, or other fermented or distilled liquors, on *Sunday, Christmas Day, or Good Friday*, before the hour of one in the afternoon, except for refreshments for travellers: nor is any person, licensed to deal in any exciseable liquor, to supply any sort of distilled exciseable liquor, to any child, apparently under *sixteen years of age* to be drunk on the premises, 2 & 3 V. c. 67, ss. 42 & 43. See post, p. 215.

### III. RETAILERS OF BEER UNDER EXCISE LICENCE.

The acts regulating the retail sale of beer are, the 3 & 4 V. c. 61, and the 1 W. 4, c. 64, amended by 4 & 5 W. 4, c. 85.

By 3 & 4 V. c. 61, it is declared, that no licence to retail beer or cider shall be granted to any one except the real resident

holder and occupier of the house in which the beer or cider is to be retailed, and that the house, if situated in the metropolis, or in any city, town, or place containing more than 10,000 inhabitants, shall not be of less annual yearly value than £15; nor in places of which the population shall be betwixt 10,000 and 2,500, of less annual value than £11; nor in any other place of a less annual value than £8; and every person applying for a licence shall produce a certificate from an overseer of his being the real occupier of the house, and of the amount at which it is rated in one rating to the poor-rates according to the last rate; but in case of a new house, the overseer may certify that it is of not less than the required annual value, and that the occupier has applied to be rated; in extra-parochial places the certificates of two inhabitant householders to be sufficient.

Overseers refusing to grant the necessary certificates when applied for, or overseers or any other persons certifying falsely, are liable to a penalty of £20; and any person forging a certificate, or making use of a certificate knowing it to be false or forged, to forfeit £50; and all licences obtained by means of such false or forged certificates are declared to be null and void; the licence is also to become void on the holder being convicted of felony, or of selling wine or spirits without a licence; and all persons so convicted are declared henceforward totally disqualified to hold a licence under this act; and if a licence is obtained surreptitiously, such licence is void, and the person so possessing it is declared liable to all the penalties for retailing beer, &c., without a licence.

Upon the death of a person licensed to sell beer, the widow or child, or administrator, may continue to sell until the expiration of the term of the licence, on having the licence endorsed as the commissioners of excise may direct.

Every person licensed to retail beer or cider, is required to make entry with the excise; and any one so licensed in whose possession wine, spirits, or sweets shall be found in or upon the premises entered with the excise shall forfeit £50, the wine or spirits found to be confiscated, and the licence to be void.

The officers of excise are empowered to enter any licensed beer or cider house, and also any house where beer is sold at 1½d. per quart or less, to search for and seize all wine or spirits, and to examine all beer or cider therein, but only during the hours in which such houses are kept open for the sale of beer or cider.

Persons selling beer or cider without a licence are subject to a fine of £5, in addition to any excise penalty, but no information to be laid for the recovery of such fine except by a constable or other officer of the peace.

*Hours of Closing Beer Shops.*—No person shall keep his house open for the sale of beer or cider, nor shall suffer any

beer or cider to be drunk or consumed in his house, at any time before the hour of five o'clock in the morning nor after twelve o'clock at night of any day in the week in the cities of London or Westminster, or within the boundaries of any of the boroughs of Mary-le-bone, Finsbury, the Tower Hamlets, Lambeth, or Southwark: nor after eleven o'clock within any parish or place within the bills of mortality, or within any city, town, or place, the population of which shall exceed 2500; nor after ten o'clock in the evening elsewhere: nor at any time before one o'clock in the afternoon, or at any time during which the houses of licensed victuallers now are or hereafter shall be closed, on any *Sunday, Good Friday, Christmas Day*, or any day appointed for a public fast or thanksgiving; and if any person shall keep his house open for selling beer or cider, or shall sell or retail beer or cider, at any time other than as hereinbefore prescribed and directed, such person shall forfeit the sum of 40s. for every offence, and every separate sale shall be deemed a separate offence; the justice may, however, mitigate any of the penalties to an amount of not less than one-fourth of the penalty: and no person is to forfeit his licence for a first offence, nor shall any such licence be deemed void unless so adjudged, of which notice is to be given to the proper excise authorities.

By the other acts it is provided that persons applying for licence must enter a bond, either with one surety in the penalty of £20, or two sureties in the penalty of £10 each, to answer fines for offences. No person licensed, nor any person not a rated householder, within the parish in which the person licensed is resident, is competent to be a surety.

Every person licensed, to have painted in letters at least three inches in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board over the door, his christian and surname at full length, together with the words, "Licensed to sell beer by retail," and underneath, as the case may be, "Not to be drunk on the premises," or, "To be drunk on the premises:" such description board to be preserved and continued during the licence. Penalty for default in any point, £10.

Persons selling beer in any other place than that specified in the licence, or selling beer without having *renewed the licence* after the year for which it had been granted has expired, or dealing in or suffering to be consumed on the premises, any *wine or spirits*, are subject, for every such offence, to a penalty of £20, beside excise penalties. Unlicensed persons selling beer by retail to be consumed *off* the premises, £10; to be consumed *on* the premises, £20. Such penalties to be recovered, levied, or mitigated, as any other excise penalty; half to the queen, and half to the person who shall inform, discover, or sue or the same.

Persons trading in partnership in one house or premises only require one licence in one year.

In case of a riot or tumult, one justice may order any licensed house to be closed for such time as he thinks expedient; or, in case any riot or tumult be apprehended, two justices have the like authority; and keeping open any house contrary to magisterial order is deemed an offence against the tenor of the licence. Beer, except in less quantities than half a pint, to be sold by the gallon, quart, pint, or half-pint measure, sized according to the standard, and to be retailed in a vessel sized according to the standard: in default, the illegal measure to be forfeited, and a fine not exceeding 30s. with costs recovered.

Every person applying for a licence to sell beer to be *drunk on the premises*, to deposit with the excise a certificate of good character, signed by six inhabitants, rated to the poor at not less than £6, none of whom shall be maltsters, common brewers, or persons licensed to sell spirits, or beer or cider, by retail, nor owners of any house licensed to sell such liquors; but if there are not ten such rated inhabitants in the place, the certificate of the *majority* of them is sufficient. Certificate to be signed by overseer, as to rating, under penalty for refusal of £5. Drinking in a neighbouring house or shed, with intent to evade the act, deemed a drinking on the premises. But certificates not required for houses in London or Westminster, nor any place within the bills of mortality, nor any city or town corporate, nor within the distance of one mile from the polling place of any town returning a member to parliament, so that the population, according to the last census, exceed 5000.

#### IV. ADULTERATION OF BEER.

By 1 W. 4, c. 64, if any person licensed knowingly sell any beer made otherwise than from *malt* and *hops*, or mix drugs or pernicious ingredients with the beer, or fraudulently *ditute* or in any way adulterate his beer, he shall, for the *first* offence, forfeit not less than £10 nor exceeding £20; for the *second* offence be adjudged disqualified from selling beer for two years, or forfeit not less than £20 nor exceeding £50, at the discretion of the justices; and if the offender disqualified for two years sell beer *in any place*, he forfeits not less than £25 nor exceeding £50 for every transgression; and any person knowingly selling beer in a place interdicted by the magistrates, shall forfeit not less than £10 nor exceeding £20.

By 56 G. 3, c. 58, no brewer or retailer of, or dealer in beer, to have in his possession, or make, use, mix with, or put into any wort or beer, or liquor, extract, calx, or other material or preparation for *darkening the colour*, other than brown malt, ground or unground, as commonly used in brewing; or have in \*

his possession, use, mix, or put into any wort or beer, any molasses, honey, liquorice, vitriol, quassia, coculus indicus, grains of paradise, quince, pepper, opium, or any extract or preparation of molasses, or any article or preparation whatever as a substitute for malts or hops. Penalty £200 for every offence, and forfeiture of all such adulterations, with the beer, wort, casks, vessels, and packages.

By section third, if any *druggist, dealer in drugs, chemist*, or other person, send, deliver, or sell to any brewer, retailer of, or dealer in beer, knowing him to be licensed, or reputed so to be, or to any other person on account of such brewer, &c., any liquor, known by the name of *colouring*, from whatever materials made, or any other preparation other than unground malt, for darkening the colour of beer, or any liquor or preparation, whether to be used in wort or beer, as a substitute for malt or hops, he shall forfeit £500 for every offence, together with the prohibited articles.

By 9 Anne, c. 12, any brewer, innkeeper, or victualler, using broom, wormwood, or other bitter ingredient, to serve instead of *hops*, to forfeit £20, half to the queen, half to the prosecutor.

#### V. HOURS AND DAYS OF CLOSING PUBLIC-HOUSES.

The acts for closing licensed victuallers' houses, and houses for retailing beer under an excise licence, during the morning service on the Lord's day in the metropolitan police district, and certain other parts of England, having been found salutary, their provisions, with some alteration, have been extended to other parts of Great Britain. The 11 & 12 V. c. 49, after stating that "great benefits" had attended such restrictions, enacts that no licensed victualler, or person licensed to sell beer by retail, to be drunk on or off the premises, or other person in *any part of Great Britain*, shall open his house for the sale of *wine, spirits, or beer*, or other fermented or distilled liquors, or sell the same on Sunday before half-past twelve o'clock in the afternoon, or, if the morning service in the church, chapel, kirk, or principal places of worship shall not terminate by that hour, before the time of the termination of such service. The like limitation as to Sunday extends in *England* to Christmas Day, Good Friday, or any public fast or thanksgiving day. But nothing in this act extends to allow any house to be opened *earlier* than was previously allowed in the metropolis or other city or town.

An act of 1855 makes additional provisions regulating the hours of closing public houses, and the 18 & 19 V. c. 118, enacts that licensed victuallers and persons licensed to sell beer by retail, whether to be drunk on the premises or not, as also any other selling wine by retail to be drunk on the premises, or

keeping any house or place of public resort, in England or Wales, shall not "open or keep open his house for the sale of or to sell beer, wine, spirits, or any other fermented or distilled liquor, between the hours of three and five o'clock in the afternoon, nor after eleven o'clock in the afternoon on Sunday, or on Christmas Day, or Good Friday, or on any day appointed a public fast or thanksgiving, or before four o'clock in the morning of the day following such Sunday, Christmas Day, Good Friday, or such days of public fast or thanksgiving, except to a traveller or to a lodger therein." Power is given to any constable to enter any house of public resort licensed for the sale by retail of beer, wine, or spirits, at any time; refusing them admittance or obstructing them, punishable by a penalty not exceeding £5.

## CHAPTER XIX.

### *Carriers, Wharfingers, and Warehousemen.*

ALL persons carrying goods for hire, as masters and owners of ships, lightermen, proprietors of waggons, stage coachmen, and the like, come under the denomination of *common carriers*, and are bound to receive and carry goods for a reasonable hire; to take due care of them in their passage; to deliver them in the same condition they were received, or, in default, to make compensation, unless the loss arise from unavoidable natural occurrences, as lightning or tempests, or from the default of the parties sending them.

Hackney coachmen, in London, are not so bound, except there be an express agreement, and money paid for the carriage of the goods.

*Special carriers*, who professedly do not carry for all persons indiscriminately, are not, like common carriers, *bound* to undertake the carriage of goods. Where, however, a person *undertakes* to carry goods safely and securely, he is responsible, though he is not a common carrier, nor receives a premium for the carriage.

The master of a stage coach, who only carries *passengers for hire*, is not liable for goods. But if he carry goods as well as *passengers for hire*, then he is a common carrier, and liable.

If a carrier entrusted with goods open the pack and take away part of the goods, he is guilty of felony. It is the same if the carrier receive goods to carry to a certain place, and carry them to some other place than that appointed, with intent to defraud the owner.

If a common carrier, who has convenience, is offered his hire, and refuse to carry goods, he is liable to an action, in the same manner as an innkeeper who refuses to entertain his guest, or a

smith who refuses to shoe a horse. The liability arises not from the remuneration, but the *public* employment that is undertaken.

But a carrier may refuse to admit goods into his warehouse at an *unseasonable* time, or before he is ready to take his journey.

If a carrier be robbed of the goods, he is liable; for, having his hire, there is an implied undertaking for the safe custody and delivery of the goods. But the carrier, under certain circumstances, may bring his action against the hundred to make good his loss.

The action against a carrier for the non-delivery or loss of goods must be brought by the person in whom the *legal right* of property in the goods is vested at the time; for he is the person who has sustained the loss by the negligence of the carrier. So, where a tradesman orders goods to be sent by a carrier, the moment the goods are delivered, it operates as a delivery to the purchaser, and the whole property from that time vests in the purchaser, who can alone bring an action for loss or damage. But if there is a special agreement by the parties, that the consignor was to pay for the carriage of the goods, the action is maintainable by the consignor.

Goods conveyed by a carrier, whether common or hired for the particular purpose, are privileged from distress or attachment on account of the debts of the persons sending them, or of the carrier.

A delivery to the carrier's servant is a delivery to himself, and shall charge him; but they must be goods such as it is his custom to carry.

On legal principles, it can make no difference whether the carriage is by land or water, but the Legislature has limited the liability of water carriage by sea. By the 7 G. 2, and the 26 G. 3, c. 86, ship-owners are not liable for any fraud or robbery by the master or mariners, nor for any loss by fire, beyond the value of the vessel and the freight of the voyage.

It seems a general rule that a carrier is bound to deliver goods at the residence of the consignee, or person to whom they are directed, where he has been accustomed to carry them home, and keeps a porter for the purpose; and where it is not customary for him to deliver at the owner's premises, it is obligatory on him to give timely notice of their arrival.

A carrier has a *lien* on the goods he carries for his hire, but it is limited to the carriage of each parcel and not general, that is, for a general balance due to the carrier from the sender for successive packages, or for a debt due to him by the consignee; but in no case can he charge more than is reasonable for his trouble, 3 *Taunt.* 164. The powers and liabilities of railway proprietors in the carriage of goods are similar to those of carriers and stage-coach proprietors.



*Warehousemen* are, when goods are stowed in the warehouse, bound to bestow reasonable and common care on them, so as to prevent them from being damaged or injured. *Wharfingers*, also, are bound to perform the same trust. But neither warehousemen nor wharfingers are liable for damages happening from accidental fire. Should they, however, have insured the goods, and received the insurance-money, they are liable to pay to the owners of the goods the money so obtained. 2 *Stark.* 400.

*Limitation of Liabilities.*—The onerous responsibility imposed on common carriers has been limited by the 1 W. 4, c. 68, which provides that no mail contractor, coach-proprietor, or other common carrier by land for hire, shall be liable for the loss or injury to gold and silver coin, bullion, jewellery, precious stones, watches, clocks, time-pieces, trinkets, bills, notes, orders or securities for payment of money, stamps, maps, writings, deeds, pictures, plate, glass, china, furs, lace, and silks *above the value of £10*, contained in any packet that has been either delivered to be carried, or to accompany the person of any passenger, unless the value and nature of the article be declared at the receiving-house, and an increased charge for conveyance be accepted. A notice of the increased rate of charge must be affixed, in *legible characters, on a conspicuous part of the receiving-house*; and parties sending valuable packets of the description mentioned are bound by such notice, without further proof of the same having come to their knowledge. Carriers not giving receipts, if demanded, of the increased rate required for the insurance of packets, or not affixing the notice, are excluded from the benefit of the statute; such receipts are not liable to the stamp duty. The publication of the notice does not limit the liability imposed by the common law, in respect of other goods than those mentioned, conveyed by carriers; neither does the act affect any *special contract* made between carriers and parties for the conveyance of goods. In case of loss carriers are not liable to make good the *declared value*, but only to the extent of the damage actually sustained, and proved by the ordinary legal evidence.

*Penalties.*—By the Turnpike Acts, the owner of every waggon, wain, cart, or such like carriage, is required to paint, on the right or off side, his christian and surname, and abode, at full length, in large legible characters, of not less than one inch in height. Penalty not exceeding £5.

One driver may take charge of two carts, if drawn by only *one* horse. No child *under* the age of thirteen to drive any cart. Penalty on the owner not exceeding 10s. A driver of a waggon, cart, &c., riding thereon (except in case of such light carts as are usually driven with reins), or wilfully being at such distance from the same that he cannot have any government of his horses, or driving any vehicle without the *owner's name*, or not keeping

the *left* or near side of the road, shall, for every offence, forfeit not exceeding 40s., or if the owner, £5; and, in default of payment, be committed to the house of correction for not exceeding one month. Drivers refusing to discover their names, in any of these cases, are liable to be imprisoned three months.

*Law of the Road.*—Whenever carriages or horsemen meet on the public road, the law, in case of accident, is always in favour of the defensive party, and against the aggressor. So if one man rides against another who stands still, or drives his waggon against a coach or other vehicle, and injures it, he is answerable for the damage. A driver or rider, on passing another horse or carriage, must keep on the off-side, or whip-hand, of the horse or carriage he may so meet, otherwise he will be answerable for any damage which may happen from the neglect of this rule. A driver, however, is not bound to keep on the left side of the road, provided he leave sufficient room for other carriages and horses to pass him on their proper side.

## CHAPTER XX.

### *Travellers and Passengers*

UNDER this head will be included the laws relative to railways, stage coaches, post horses, hackney coaches, emigrant ships, and passengers by sea.

#### I. RAILWAYS.

The powers of inspection and control in the construction of railways vested in the Board of Trade by 3 & 4 V. c. 97, are transferred to commissioners of railways, appointed by the crown by 9 & 10 V. c. 105. Under these acts it is provided, that no railway shall be opened for the public conveyance of passengers or goods until a month after notice, in writing, of the intention of opening the same shall have been given to the commissioners; and if any railway shall be opened without due notice, the company shall forfeit £20 for every day during which the same shall continue open, until the expiration of a month after the company shall have given the notice required.

The commissioners may direct every railway company to deliver returns of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively on the railway, as well as of all accidents which shall have occurred attended with personal injury, and also a table of all tolls, rates, and charges levied on each class passengers, and on cattle and goods, conveyed on the railway; and if not delivered within thirty days after the same shall have been required, every such company shall forfeit £20 for every

day during which the company shall neglect to deliver the same ; and every officer of any company making false returns shall be deemed guilty of a misdemeanor.

Commissioners may appoint proper persons to inspect any railway ; and it shall be lawful for every person so authorized to examine the railway, and the stations, works, and buildings, and the engines and carriages ; but no person to be eligible to the appointment as inspector who shall within one year of his appointment have been a director or held any office of trust or profit under any railway company ; and any person obstructing such person shall be liable to a penalty of not more than £10, according to the discretion of a justice of peace, or in default of payment to an imprisonment of not more than three months.

Copies of the by-laws, rules, &c., of every company are to be laid before the commissioners, or otherwise to be void. No by-law valid until two months after it has been laid before them, unless it shall be certified as approved of before the expiration of that period ; and commissioners are empowered to disallow any of the by-laws.

Any person in the employ of a railway company found drunk while so employed, or who shall negligently or wilfully endanger the life or limb of any person, or the works or carriages, may be summarily punished by imprisonment, with or without hard labour, for any term not more than two months, or sentenced to the payment of any penalty of not more than £10.

Persons trespassing upon or wilfully obstructing the officers of a railway, may be apprehended and taken before a justice, who may sentence them to a fine of any sum not exceeding £3, and in default of payment to imprisonment for any term not exceeding two months.

The 7 & 8 V. c. 85, passed in 1844, empowers the Lords of the Treasury, if, after twenty-one years from the passing of any *future* railway act, the profits shall exceed 10 per cent. per annum on an average of the three preceding years, to revise the tolls so as to reduce the divisible profit to 10 per cent. ; or they may purchase any such future railway at twenty-five years' purchase. Future railway companies, or such companies as may obtain any extension or amendment of the powers conferred on them by their previous acts, shall by means of one train at the least once on every week day, except Christmas Day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of *third-class passengers* to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of parliament, and with the immunities applicable by law to carriers of passengers by railway ; and also under the following conditions :—

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the Board of Trade; it shall travel at an average rate of speed of not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages; if required, it shall take up and set down passengers at every passenger station which it shall pass on the line; the carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather; the fare for each third-class passenger shall not exceed 1*d.* for each mile travelled; each passenger shall be allowed to take with him half a hundredweight of luggage, not being merchandise or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains; children under three years of age accompanying passengers by such train shall be taken without any charge, and children three years and upwards, but under twelve years of age, at half the charge for an adult passenger.

Whenever trains run on Sunday on any railway, carriages are to be attached to such train each way as shall stop at the greatest number of stations for third-class passengers, and the charge not to exceed 1*d.* per mile.

The 8 V. c. 20, consolidates certain provisions usually inserted in railway acts, and applies to all acts subsequently obtained. It enacts penalties for sending dangerous goods, as vitriol, by railways, and provides for the public exhibition of tables of tolls, and the erection of milestones. By section 103, persons attempting to practise frauds on a railway company by travelling beyond the distance for which they have paid, are subject to a penalty of 40*s.*, and may be detained by the officers of the company.

*Gauge of Railways.*—The 9 & 10 V. c. 57, renders it unlawful to construct any railway for the conveyance of passengers on any gauge other than four feet eight and a half inches in Great Britain, and five feet three inches in Ireland: but this gauge does not extend to the repair and maintenance of railways already constructed, nor to any railway constructed under the provisions of any present or future act containing a special enactment defining the gauge of such railway; nor to any railway which in its whole length is southward of the Great Western. Gauge of any railway not to be altered after passing of the act. Penalty for constructing any railway contrary to the act, ten pounds per mile, for every day such railway is in use.

*Liabilities.*—By 17 & 18 V. c. 31, every railway and canal company is required to make arrangements for receiving and forwarding passengers and goods without unreasonable delay,

and without partiality or preference. Parties complaining that reasonable facilities for traffic are withheld, may apply, by motion or summons, to a superior court; upon certificate of the Board of Trade of such want of facilities, addressed to the chief law-officer of the crown in England, Scotland, or Ireland, the court, if it think fit, may direct inquiry, and issue an injunction. Disobedience to injunction to be liable to a penalty of £200 per day. Companies made liable for neglect or default in the carriage of goods, notwithstanding notice to the contrary, but not liable beyond a limited amount, as fifty pounds for a horse, or fifteen pounds for neat cattle, &c., unless on an extra value of the article having been declared and paid for, s. 7.

## II. STAGE COACHES.

By 2 & 3 W. 4, c. 120, s. 5, a stage carriage is defined to be every carriage, without regard to the form or construction, used for conveying passengers for hire to or from any place in Great Britain, and which travels at the rate of three miles or more in the hour, provided each passenger is charged a *separate* fare; such definition not to apply to carriages used on a railway or impelled by steam, or otherwise than animal power.

*Licences and Plates.*—Persons applying for a stage-carriage licence, to sign a requisition in the form prescribed by commissioners of stamps, specifying the name and place of abode of each proprietor; penalty for omitting name of any proprietor £10, or inserting a false name a misdemeanor. Licences to be renewed annually. Penalty for rendering false account of number of journeys performed, £50. Refusing or neglecting, for five days, to deliver up defaced plates, £20. Using a stage carriage without licence, or without the proper number of plates, or not delivering up defaced plates within one week after being recalled, £20. *Plying for hire* without plates, £10 on the driver; or if, also, owner, £20: persons so offending may be apprehended by an officer of stamps or constable, and the carriage seized. Licensed carriages may ply for hire, and take up and set down passengers, without liability to the Hackney Coach Act. Plates unlawfully detained may be seized, and obstructing officers in seizing them, £20.

*Passengers and Luggage.*—Carrying a greater number of passengers than allowed by licence, penalty for each, £5. Children in the lap, or one child under seven years of age, not reckoned; but two children, not in the lap, though under seven, to count as one passenger. In words at length, and in letters one inch in height, and in a colour different from the ground, must be painted the christian and surname of at least *one* proprietor, and the names of the extreme places to and from which a carriage is licensed to travel; also must be painted, in like con-

spicuous manner, on the back of the carriage, the number of inside or outside passengers allowed to be carried; penalty for omission, or suffering any of the said particulars to remain defaced or obliterated, £5.

No person allowed to sit on the luggage placed on the roof, nor more than one person on the box with the driver: penalty in either case £5. Neither driver nor guard counted in number of passengers.

Luggage carried on the top of a carriage drawn by four or more horses, not to exceed ten feet nine inches in height from the ground; nor luggage carried on the top of a carriage drawn by two or three horses only, not to exceed ten feet three inches in height, measured from the ground to the highest point of any part of the luggage. Justices, road-surveyors, constables, stamp officers, and passengers, authorized to cause carriages and luggage to be measured, and number of passengers to be counted; and may require a toll-gate keeper to count passengers and measure the luggage, and sign a memorandum thereof. Penalty on proprietor, driver, or toll-gate keeper refusing, £5. These provisions not to extend to *mail coaches*, 2 & 3 W. 4, c. 120, s. 146.

*Penalties on Drivers and Guards.*—If the *driver* of any stage carriage drawn by three or more horses, quit the box without delivering the reins to a proper person, or a person being placed at the horses' heads; or permit any person to drive; or quit the box without reasonable cause and for a reasonable time; or suffer any plate to be concealed, so as not to be distinctly legible; or if the *guard* discharge fire-arms unnecessarily; or if the driver or guard neglect to take care of the luggage, or ask more than the proper fare; or neglect to account to employer for moneys received; or assault or use abusive language to any person travelling or about to travel, or having travelled as passenger, or any person attending on or accompanying such passenger,—in each of these cases the offender to forfeit £5.

If the driver or guard, or any person employed about the carriage, through *intoxication, negligence, wanton or furious driving, or any other misconduct*, endanger passengers or their property, or the profits of the owner of the carriage, to forfeit £5. Owners are liable for penalties, where the driver or guard is not known or cannot be found.

In the metropolis any licensed stage carriage, having the proper numbered plates, may stand, or ply for passengers for hire, and take up, convey, and set down such passengers at any place within five miles of the General Post Office, or elsewhere, notwithstanding any provision to the contrary in the Hackney Coach Act; provided such stage carriage does not deviate from the proper route or line of road specified in the licence, 2 & 3 W. 4, c. 120, s. 31.

By 5 & 6 V. c. 79, no stage coach to carry a greater number of passengers than it is constructed to carry; that is, so as to allow upon fit and proper seats a space on an average of sixteen inches to each. Children under five, sitting on the lap of a person, not considered as passengers.

### III. LICENSED POST-MASTERS.

The penalties to which these are liable, are chiefly regulated by 2 & 3 W. 4, c. 120, which subjects to a forfeiture of £10 any person letting a horse *for hire* without licence from the commissioners of stamps. No licensed post-master to let horses at more than one house by virtue of one licence, under a penalty of £20; and a penalty of £5 for not having the words, *Licensed to let Horses for Hire*, painted in legible characters on the front of the house. Penalty £10 for not giving tickets with hire of horses, and no person bound to pay hire for more miles than expressed in the ticket. Penalty for not truly filling up a ticket £10, and commissioners may refuse to renew licence. Penalty on persons neglecting to give ticket to the first toll-gate keeper, or falsely alleging hired horses to be their own, £10. Penalty for forging or counterfeiting any ticket, £50. Post-masters guilty of any fraud or contrivance to evade payment of duties, to forfeit £50. Unlicensed persons letting horses for hire, to account for the duties, and neglecting to make a return thereof, on a week's notice from collector, to forfeit £20 and double duties.

The duties imposed by the act do not extend to horses used in stage or hackney coaches, duly licensed, nor to any mourning coach or hearse, where the same is hired to go no greater distance than ten miles from Temple Bar, nor to any cart or carriage kept for the conveyance of fish.

### IV. STAGE AND HACKNEY CARRIAGES IN THE METROPOLIS.

These vehicles, as well as carts and drays, used within the metropolitan district, are regulated by 1 & 2 W. 4, c. 22, 1 & 2 V. c. 79, and 16 & 17 V. c. 33,

Hackney carriage includes every carriage, except a stage carriage, or a carriage impelled by the power of steam or otherwise than by animal power, with two or more wheels, which is used for the purpose of standing or plying for hire, at any place within the distance of ten miles from the General Post Office in the city of London. Metropolitan stage carriage includes every stage carriage, except such as, on every journey, go to or come from some place beyond the distance of ten miles from the General Post Office.

“Metropolitan Stage Carriage” to be inscribed on every stage

carriage, and the number of the stamp-office plate, and the number of passengers to be carried, painted or affixed thereon, both inside and outside, under a penalty not exceeding 20s.

All hackney coaches to have four plates, namely, on the back, each side, and inside, to contain the name and address of the proprietor. Names and places of abode of proprietors, and number of plates, to be registered at Guildhall, in the city, under a penalty of 40s. The weekly duty of 10s. to be paid monthly, on the first Monday of every calendar month. Plates to be delivered up on the discontinuance or revocation of licence, under a penalty of £10. Carriages, horses, harness, and other articles may be seized for duties and penalties incurred. Concealing plates, or preventing persons inspecting and taking number thereof, a penalty of £5. Penalty of £10 for keeping or using a hackney carriage without licence or without plate, or not delivering up the plate when recalled. Penalty on the driver of a carriage plying for hire without plate, £5; or, if the owner, £10. Forging the stamp-office plate, a misdemeanor, subjecting to fine or imprisonment, or both. Upon complaint before a justice, the proprietor may be summoned to produce the driver; and failing so to do, subjects to a penalty of 40s.

*Watermen*, or assistants to drivers of hackney carriages at the standings, to wear badges and be licensed; penalty for acting without, 40s. Attempting to procure licence in a fictitious name subjects to a fine or imprisonment, or both.

\* *Distance, Drivers, and Penalties.*—Drivers may ply on Sundays, subject to the same liabilities as on other days. Persons refusing to pay the driver, or compensate him for loss of time in summoning for the same, or to satisfy him for damage caused to his carriage, may be imprisoned one calendar month. Drivers refusing to go, or exacting more than the legal fare, or not travelling with proper expedition, subject to a penalty of 40s. Agreements to pay more than legal fare not binding, and the excess paid may be recovered, and the driver fined 40s. for his extortion. For a stated sum, the driver may agree to drive any distance at discretion, and is liable to a penalty of 40s. for demanding more than sum agreed upon, though less than the legal fare. Deposit to be made for carriages *waiting*; refusing to wait, or account for the deposit, or going away before the time has expired for which the deposit was made, a penalty of 40s. *Check-strings* to be provided, and while driving to be held by the driver, under a penalty of 20s. Driver not to permit any person to ride in, upon, or about any carriage, without the express consent of the person hiring the same, under penalty of 20s. Plying or standing with carriage across any street, passage, alley, or alongside any other carriage, two in a breadth (except in Palace Yard), or within eight feet of the curb-stone; or feeding the horses in the street, except corn out of a bag, or



hay from the hand; or wantonly obstructing any private coach or other carriage; or in a forcible and clandestine manner taking the fare from any other driver,—in all these cases, the penalty on the proprietor, driver, or waterman offending, is 20s. On every standing, a clear space of ten feet to be left between every four carriages; penalty on carriage after the fourth not observing the rule, 20s. Carriages left unattended at places of public resort may be driven away by any peace officer or watchman, and the driver fined 20s. Endangering any person by *intoxication, wanton and furious driving*; or using abusive and insulting language, or being guilty of other rude behaviour, subjects any proprietor, driver, or waterman, to a penalty of £3, and the licence may be revoked. Justices may order compensation to drivers, &c., for loss of time in attending to answer complaints not substantiated against them.

By 6 & 7 V. c. 86, any driver or conductor guilty of furious driving, or carelessly causing any hurt or damage to person or property of passenger, or being drunk during his employment, or using insulting language or gesture, to forfeit £3, or be committed to prison, if the magistrate think fit, for two months. Plying elsewhere than at the place appointed, loitering in the street, or obstructing the thoroughfare, or stopping on the usual crossing of foot passengers, or refusing a fare without just cause, or deceiving any person as to the route or destination of the carriage, or allowing passenger (unless the carriage is hired by him) to ride on the driving-box; or driver or conductor persisting to smoke while acting in such capacity, after objection taken by a passenger,—for each of these offences a penalty of 20s. Property left in a carriage must be given into the custody of the conductor or driver, under a penalty of £20.

*Licences, Fares, &c.*—By 16 & 17 V. c. 33, any person desirous of obtaining a licence to keep, use, and let to hire a stage or hackney carriage, must apply in writing to the Commissioners of the Police of the Metropolis, who, if, on inspection, the carriage is found fit and in proper condition for public use, shall grant a certificate, specifying the number of persons to be carried in such carriage. Upon the production of such certificate at the office of Inland Revenue, a licence will be granted. After grant of licence police may inspect carriages, and, if unfit for use, or the horses, licence may be suspended. Penalty for using them after notice of suspension, £3 each day.

By s. 4, the *fares*, within and not exceeding one mile, sixpence; and after the rate of sixpence for every additional mile or part of a mile. For any time not exceeding one hour, two shillings. Where a fare is calculated according to distance, and the driver is required to stop on the way, a further sum of sixpence is to be paid for every quarter of an hour he shall

have so been stopped. No *back fare* to be taken or demanded.

For carriages drawn by *two horses* the charge is *one-third* more than the preceding rates and fares.

Fares are to be paid according to distance or time, at the option of the hirer, to be expressed at the commencement of the hiring; if not otherwise expressed, the fare to be paid according to distance. For a fare to be paid according to time, no driver will be compellable to hire his carriage after eight o'clock in the evening, or before six o'clock in the morning. Two children under ten years of age to be counted as one adult person. When more than two persons shall be carried inside any hackney carriage, with more *luggage* than can be carried inside the carriage, a further sum of twopence for every package carried outside the said carriage is to be paid by the hirer in addition to the fare.

The amount of fare according to distance and time, which may be legally demanded, is to be distinctly painted both on the inside and outside of each hackney-carriage. The driver is also to produce a book of fares when required. Tables of distances and fares to be erected at the several standings at the option of the Commissioners of Police.

No driver shall be required to drive more than *six* miles from the place of hiring. When hired by time, no driver shall be required to drive at a faster rate than four miles an hour, unless he is paid an additional 6*l.* for every mile or part thereof, exceeding four miles. A ticket, on which is printed the number of the carriage, is to be delivered by the driver to the hirer at the time of hiring. The number of persons to be carried is to be painted on the carriage. Any reasonable quantity of luggage is to be carried without additional charge.

*Property* left in a carriage is to be deposited by the driver at the police office, within twenty-four hours, or in default a penalty of £10, or one month's imprisonment. Any property found in a carriage by a passenger is to be given up to the driver or conductor, under a penalty of £10. Property not claimed within a twelvemonth to be disposed of, and the proceeds paid to the receiver-general of Inland Revenue.

Persons to be appointed to enforce good order at the stands.

Lamps are to be placed inside the stage carriages.

No printed bills to be put inside the carriage so as to obstruct the light or ventilation.

Drivers who fail to abide by the regulations will be liable to a penalty of 40*s.* for every offence.

When disputes arise, the hirer may require the driver to drive to the nearest police court, if the magistrate be sitting; if otherwise, to the nearest police station.

By s. 16, no person is allowed to carry about on any carriage,

or on horseback, or on foot, in any thoroughfare, or public place, to the obstruction or annoyance of the inhabitants or passengers, any *picture, placard, notice, or advertisement*, whether written, printed, or painted upon, or posted, or attached to any part of such carriage, or any board, "or otherwise." Penalty 40s., or one month's imprisonment.

The limits of this act include every part of the Metropolitan Police District and city of London, and is to be construed with former acts, except as to application for licence.

As a substitute for *back fares*, a subsequent act, the 16 & 17 V. c. 127, s. 13, provides that 1s. *per mile* may be charged for every mile, or part of a mile, beyond the distance of four miles from Charing Cross, provided a carriage be discharged beyond that distance. By s. 14, when more than two persons are conveyed by a carriage drawn by one horse, 6d. for *each* person above two may be charged for the whole hiring in addition to the fare. When a carriage is hired by *time*, 6d. to be paid for every fifteen minutes, or portion of fifteen minutes, above one hour.

By s. 16, if carriage be *withdrawn from hire for two successive days*, or for any two days in one week, without just cause, of which the magistrate is judge, the proprietor liable to a penalty of 20s. for each carriage withdrawn; the licence may be suspended or recalled at discretion of Commissioners of Police.

By the same act, the licence duty is reduced from £5 to £1 per annum; and the weekly duty from 10s. to 7s., or, if carriage is not used on Sunday, 6s.

Under this act, officers of Inland Revenue, or of the Metropolitan Police, can only prosecute before justices for penalties.

*City of London and Borough of Southwark.*—The court of aldermen may appoint standing places in the city and borough for carriages, regulate the number of carriages, the distances at which they shall stand from each other, the hours of plying for hire, and make regulations for the drivers and persons having the management of the carriages; such regulations of the court not to be contrary to the provisions of this act, and, prior to being carried into effect, to be inserted in the *Gazette*, and two or more newspapers, and hung up for inspection in the Town Clerk's office; penalty for infringing regulations of the court not to exceed £5.

*Waggons, Carts, Cars, and Drays.*—The christian and surname and place of abode of the owner (or if more than one owner, the principal) of every waggon, wain, cart, car, dray, and other such carriage, used in any public street or road within five miles of the Post Office, must be painted on some conspicuous place on the right or off-side, clear of the wheel, or on the right side shaft, in letters of black upon a white ground, or of white upon a black ground, of at least one inch in height, and of proportionate breadth; such letters to be renewed as

often as any part of them is obliterated. Penalty for neglect £5, and any person may seize the waggon, cart, &c., not having the name painted as directed, and convey the same to a green-yard, or livery-stable, to await the decision of the magistrate.

*Porterage of Parcels.*—By 39 G. 3, c. 58, no person is to charge, within London, Westminster, Southwark, and the suburbs, and other parts not exceeding half a mile from the end of the carriage pavement, for the porterage of parcels, not exceeding 56 lbs., more than—for not

	<i>d.</i>
Exceeding a quarter of a mile . . . . .	3
Exceeding a quarter and not half a mile . . . . .	4
Exceeding half a mile and not one mile . . . . .	6
Exceeding one mile and not a mile and a half . . . . .	8
Exceeding one mile and a half and not two miles . . . . .	10

And so in proportion, 3*d.* for every further distance not exceeding half a mile. Tickets to be made out at the inns, and given to the porters, and by them delivered with the parcels: and any innkeeper not making out such tickets to forfeit not exceeding 40*s.* nor less than 5*s.*; and porters not delivering, or defacing the same, 40*s.*; or porters overcharging, 20*s.* Parcels brought by coaches to be delivered within six hours; penalty not exceeding 20*s.* nor less than 10*s.* Parcels brought by waggons to be delivered within twenty-four hours, on a like penalty. Parcels directed to be left till called for, to be delivered to persons to whom the same may be directed, on payment of the carriage and 2*d.* for warehouse-room, on like penalty. Parcels, if not sent for till the expiration of one week, 1*d.* more for warehouse-room may be charged. Parcels not directed to be left till called for, to be delivered in like manner on demand, under a like penalty. *Misbehaviour* of porters may be punished by a fine not exceeding 20*s.* nor less than 5*s.*

The *ticket porters* claim the sole privilege of carrying parcels and burdens within the limits of the city of London. A parcel carried *for hire*, however small, would be deemed an infringement of their rights. But the innkeepers have disputed this, and claim the right to employ their own porters in unloading waggons, and delivering goods consigned to them. The opinions of counsel, and the decisions of the lord mayor's court, have been conflicting on this point of local privilege; the former being in favour of the innkeepers, and the latter has decided in favour of the claim of ticket porters.

#### V. SHIPS PASSENGER ACT OF 1855.

This act, the 18 & 19 V. c. 119, repeals the act of 1852, but not that of 1853. It embodies the chief provisions of the former act, but allows rather more space for passengers, provides

more boats for large ships, and] makes better provision for enforcing contracts. It does not extend to cabin passengers, but cabin passengers-only such as mess with the master, and pay at least 30s. weekly during the voyage. Extends to every passenger ship on any voyage from Britain, Ireland, or the Channel Islands, to any place out of Europe, not within the Mediterranean Sea; except ships of war, transports, or mail steamers. Commissioners of Emigration to carry act into execution.

Facilities to be given by master to the proper officers to inspect any ship, whether a passenger ship or not, intended for the carriage of passengers. Any person found on board fraudulently attempting to obtain a passage, or persons aiding such attempt liable to a penalty of £5, or imprisonment; and no passenger ship to clear out without a certificate of having complied with the provisions of the act. No ship to carry passengers on more than two decks, nor be allowed to clear out with a greater number of persons on board, than in the proportion of one person to every two tons of the registered tonnage. Penalty for a greater number of either persons or passengers, for each not less than £5, or above £20. Two children under twelve years of age to be reckoned as one person or passenger, but children not above one year old not computed.

For *light and air*, the passengers at all times (weather permitting) to have free access to and from between decks by the hatchway appropriated for their use. Penalty on owner for failure, not above £50 nor less than £20. Two boats to be provided for every ship of less than 200 tons; three boats, if 200 tons and upwards; four boats, if of 400 tons. One boat to be a long boat, and one a life boat, with life buoys, &c. Each ship to be manned with a proper complement of seamen. Gunpowder, vitriol, guano, green hides, or any other article likely to endanger life, or health, prohibited as cargo, and no part of the cargo to be on deck.

*Dietary scale* for each passenger (exclusive of any providings by the passengers themselves), of water at least three quarts daily; of provisions, after the rate per week of three-and-a-half pounds of bread or biscuit, not inferior in quality to navy-biscuit; one pound of wheaten flour, one-and-a-half pound of oatmeal, two ounces of tea, one pound of sugar, and two ounces of salt. The water to be pure, and the provisions sweet and wholesome. Such issue of provisions to be made daily before two o'clock in the afternoon, as near as possible in the proportion of one-seventh part of the weekly allowance; first issue to be made on the day of embarkation to all passengers on board, and articles to be in a cooked state. Other articles of diet may be substituted by the master, in a fixed proportion, provided the substituted articles be set forth in the contract tickets of the passengers, s. 35.

Emigration Commissioners may substitute other articles of food after notice in the *London Gazette*, s. 37.

In every ship with above 100 passengers, a passenger steward, approved by the emigration officer, to be appointed, to be employed in messing and serving out provisions, and maintaining order and cleanliness. Also a cook and cooking apparatus. In *foreign* passenger ships interpreters to be provided, ss. 38, 40.

No passenger ship, having fifty persons on board, and the computed voyage exceeding eighty days by sailing vessels, or forty-five by steamers, or having 100 persons on board, whatever the length of the voyage, and not bound to *North America*, allowed to proceed on the voyage without a duly-qualified medical practitioner on board. Ships bound to *North America*, and allowing fourteen in lieu of twelve feet superficial space for each passenger, may clear without medical practitioner. But no vessel to clear without medical man, if passengers exceed 500, s. 42.

Diseased persons to be relanded and entitled to recover their passage-money. If passages not provided by owners, according to contract, passage-money to be returned, with compensation. Subsistence money, at the rate of one shilling per day for each passenger, to be paid by the owners, in case the day fixed for sailing be deferred. In case of wreck, another vessel to be provided for the passage, or compensation may be recovered. Passengers to be maintained and lodged during the voyage, and for forty-eight hours after arrival. Ships putting back to replenish provisions, medical stores, &c.

Surgeon, or in his absence the master, may exact obedience to rules and regulations, and persons obstructing liable to a penalty. Abstracts of the act to be prepared by commissioners, and two copies posted between decks. Penalty on master for neglect not above 40s.; or on any person displacing or defacing the same a like penalty. Sale of spirits on board prohibited under penalty of £20, or not less than £5, s. 62.

No person to act as a passage-broker without a licence; penalty not less than £20, nor above £50. Licences obtained at petty sessions of the district where the applicant has his office. Fraudulently altering contract ticket, or inducing any one to part with it, penalty not less than £2, nor above £5.

Certain exceptions from the provisions of the act in respect of Colonial voyages, that is, voyages from one colony to another, and not exceeding three weeks in computed duration. Governors of British possessions abroad may adopt the act with certain exceptions.

The act of 1855 does not affect the regulations in respect of emigrants, made by an Order in Council, dated Oct. 16, 1852.

*Passengers to Ireland.*—The 4 G. 4, c. 88, regulates the carry-

ing of passengers between Britain and Ireland. By this act, no master of a vessel, under 200 tons, shall take more than twenty passengers, unless licensed by the collector of the customs at the port of sailing. Vessels licensed not to take, exclusive of the crew, more than five adult persons, or ten children under fourteen, or fifteen children under seven years, for every four tons' burthen : and if such vessel be partly laden with goods or wares, not to take more than the above proportion of passengers for every four tons that remain unladen. Penalty for carrying more than *twenty* without licence, £50 ; and if licensed for more than the above proportion for each four tons' burthen, £5 each passenger. Merchant vessels of not more than 100 tons not to carry more than ten persons, or not more than 200 tons not more than twenty persons : penalty £5 each person.

*Excisable Articles.*—By 9 G. 4, c. 47, it is enacted, that the master of any packet or vessel employed in carrying passengers from one part of the United Kingdom to another is to be licensed by the commissioners of excise, or (5 W. 4, c. 75) by *any* officer of excise authorized to grant licences, to retail *foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco* ; such licence to be in force till the 5th of July following ; and the master obtaining the licence to produce a certificate of his nomination by the owner of the vessel ; the licence is transferable by indorsement ; s. 1. Duty to be paid by the owners on obtaining such licence, £1 ; s. 2. Penalty for selling wines, &c., without licence, for every offence, £10 ; s. 3.

## CHAPTER XXI.

### *Pawnbrokers.*

PAWN is a pledge or security for a loan of money, and which becomes forfeited unless it be redeemed by the repayment of the money advanced, with interest, within a period fixed by law.

A pawn cannot be taken in an execution against a pawnbroker ; nor can it be *used* without the consent, express or implied, of the owner, *Lit. Rep.* 332.

A pawnbroker refusing to deliver up goods pledged on tender of the money may be *indicted* ; because, being secretly pledged, it may be impossible to prove a deposit for want of witnesses, if an action of trover be only brought for them, 3 *Salk.* 268.

In the metropolis, no sale, exchange, or pawn of any jewel, plate, household stuff, or other goods stolen or wrongfully taken, deprives the real owner of his property therein, and any pawnbroker refusing to produce such articles to the owner shall forfeit double the value, 1 Jac. c. 21. By 2 & 3 V. c. 71, a police

magistrate may compel the restoration to the owner, with or without compensation to the pawnbroker, of goods so obtained.

Pawnbrokers trading in gold or silver plate are to take out an excise licence, and pay a duty of £5 15s. per annum; also, if within the bills of mortality or twopenny post, or within the cities of London and Westminster, an annual licence-duty of £15; elsewhere, £7 10s. Licences expire annually on the 31st of July, and a penalty of £50 is imposed for not renewing them ten days before the time.

Every pawnbroker must cause his name, and the word "*Pawnbroker*," to be put up, in large legible characters, above the door of his shop, on pain of forfeiting £10 per week.

The *rate of interest* on pledges, and other matters relative to pawnbrokers, are chiefly regulated by 39 & 40 G. 3, c. 99, by which the following rates are allowed:—

For every pledge not exceeding 2s. 6d., *one halfpenny* for any term not exceeding one calendar month it shall remain in pawn, and the same for every month afterwards, including the current month in which such pledge is redeemed, though such month is not expired.

s.	d.		d.
If 5	0	shall have been lent . . . . .	1
7	6	. . . . .	1½
10	0	. . . . .	2
12	6	. . . . .	2½
15	0	. . . . .	3
17	6	. . . . .	3½
20	0	. . . . .	4

So on in proportion for any sum not exceeding 40s. If exceeding 40s. and not exceeding 42s., *eightpence*; if exceeding 42s. and not exceeding £10, after the rate of *threepence* for every 20s. by the calendar month, and so in proportion for every fractional sum.

For any intermediate pledge between 2s. 6d. and 40s. the pawnbroker may take after the rate of 4d. for the loan of 20s. per month. Where the fraction of the sum to be paid is a *farthing*, the pawnbroker is bound to give a farthing in change for a halfpenny.

Parties may redeem within seven days after the end of the *first* month without paying anything for the *extra* seven days, or within fourteen days on paying for one month and a half; but parties redeeming *after* the expiration of the fourteen days must pay the second month; and the like regulations are observable in every subsequent month, when the parties apply to redeem.

Pawns must be entered in a book, with a description of the goods, the money lent, the date, name, and abode of the person pawning; and a duplicate of this entry, with the name and



abode of the pawnbroker, shall be given *on a note* to the pawnier.

The duplicate is given *gratis* if the sum lent is *under 5s.*, but if the money is *above 5s.* and under 10*s.* the pawnbroker may take a halfpenny; for 10*s.* and under 20*s.* one penny; 20*s.* and under £5, twopence; £5 or more, fourpence. Upon the production of the duplicate, the pawnbroker delivers up the goods pawned.

Every pawnbroker must exhibit in his shop, in large legible characters, the rate of profit, charges on duplicates, &c. Persons pawning goods without the authority of the owner, shall forfeit not less than 20*s.* nor more than £5, with the full value of the goods; and, on default of payment, may be committed to the house of correction to hard labour for three months, and whipped. Persons *forging* or *counterfeiting* duplicates, or not giving an account of themselves on offering to pawn or redeem goods, may be seized and carried before a justice, who, on conviction, may send the offenders to the house of correction for any period not exceeding three months.

Persons buying, or taking in pledge, *unfinished* goods, or linen or apparel entrusted to others to wash or mend, shall forfeit double the sum lent, and restore the goods. Peace officers, under a warrant, may search for such goods, and, if found, restore them to the owner.

Persons producing the duplicates shall be deemed the owners; and where duplicates or memorandums are lost, the pawnbroker shall deliver a copy, with the form of an affidavit, receiving for the same, where the goods pawned do not exceed 5*s.*, a *half-penny*; exceeding 5*s.* and not 10*s.*, *one penny*; if above 10*s.*, according to the rates payable for the original duplicate; the affidavit being sworn before a justice of peace, the goods may be redeemed.

All pawned goods are forfeited and may be sold at the end of ONE YEAR. Where the sum lent is above 10*s.* and not exceeding £10, they must be sold by public auction, notice of such sale being twice given, at least two days before the auction, in a public newspaper; but on a notice *in writing* in the presence of a witness from the owner of the goods *not to sell*, three months' further time shall be allowed beyond the year of redemption.

Pictures, books, statues, philosophical instruments, china, &c., can only be sold four times in the year, namely, on the first Monday, and following days, in January, April, July, and October, in each year.

An account of the sale of pledges above 10*s.* must be kept, and the overplus paid to the owner, if demanded within *three years* after the sale. Penalty £10, and treble the sum lent.

Taking in pawn any chattel or article belonging to any parish, and branded with the word "*workhouse*," penalty not less than

20s., nor exceeding £5, half to the informer, and half to the parish, 55 G. 3, c. 137, s. 2. Pawning, selling, or receiving in pawn, or buying, any clothes or articles marked "*Chelsea Hospital*," or defacing such mark, subjects to a penalty of £10, for every offence, 5 G. 4, c. 107.

Pawnbrokers cannot purchase any goods in pledge, except at auction. They cannot take in pledge goods from persons appearing under twelve years of age, or intoxicated with liquor; they cannot buy or take in pawn the notes of other pawnbrokers, nor buy any goods before eight in the forenoon, nor after eight in the evening. Within the limits of the metropolitan police district they are prohibited from taking pledges, or purchasing any article from children apparently under sixteen years of age, 2 & 3 V. c. 47, s. 50.

All forfeitures and penalties may be recovered before any justice, so that prosecutions be commenced within *twelve months*. No fee or gratuity to be taken for any summons or warrant relating to goods pawned.

The acts for the regulation of pawnbrokers do not extend to persons lending money at £5 per cent. without further profit.

Pawnbrokers omitting to pursue the course required by the statute have no property in the pledges they receive, 5 *Bing. N. C.* 76.

By 9 & 10 V. c. 98, no pledge shall be *taken* in before eight in the morning or after seven in the evening, between the 29th of September and the 25th of March, or before seven in the morning or after eight in the evening for the rest of the year, except on Saturday evenings, and the evenings next preceding Good Friday, Christmas Day, and every fast or thanksgiving day, when they may be taken till eleven. An offence against this act is punishable by fine before a justice of not less than 20s. nor more than £5, and may be levied by distress, with costs. This shortens the former hours, under the act 39 & 40 G. 3, c. 99, on the usual but not the exceptional days, by one hour in the evening. There is not a word in the act as to *delivering* pledges.

The acts relating to pawnbrokers are amended by 19 & 20 V. c. 2, with the aim of preventing evasions in the annual licence, and the practices of persons who receive goods into their possession and advance money thereon, under the pretence that the transaction is a sale and purchase of goods, not a receiving by way of pawn or pledge. For preventing such evasions, a pawnbroker is described to be "every person who shall keep a house, shop, or other place for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and shall purchase or receive or take in any goods or chattels, and pay or advance or lend thereon any sum of money not exceeding £10, with or under any agreement or,

understanding, express or implied, or which, from the nature or character of the dealing, may reasonably be inferred, that such goods or chattels may be afterwards redeemed or re-purchased on any terms whatever." Penalty on persons declared to be pawnbrokers not taking out a proper licence £50.

## CHAPTER XXII.

### *Auctioneers and Appraisers.*

A SALE by auction is defined by 19 G. 3, c. 56, and 42 G. 3, c. 93, to be "a sale of any estate, goods, or effects whatever, by outcry, knocking down of hammer, by candle, by lot, by parcel, or by any other mode of sale at auction, or whereby the highest bidder is deemed to be the buyer."

By 8 V. c. 15, the duties on sales by auction were repealed, and previous statutes so far as they related to the collection of the duties. A licence is declared necessary for carrying on the business of an auctioneer, for which the sum of £10 is to be paid; the duty to be under the management of the excise, and recoverable under the excise acts; the licence is to be renewed ten days at least before the expiration thereof, on the 5th of July in every year, under the penalty of £100 for omission, and carrying on the business of an auctioneer without such licence; a separate licence is requisite to sell plate or other articles.

But certain sales need not be conducted by a licensed auctioneer, namely, goods sold under a distress for less than £20, for rent or tithes, and under the provisions of certain small debts acts.

Before the commencement of an auction, s. 7 requires the auctioneer to suspend in some conspicuous part of the room a ticket or board, containing his full christian and surname and place of residence; and to produce his licence to, or deposit £10 with, any officer of excise or customs, or stamps and taxes, who may demand its production; in default, he may be arrested at the termination of the sale, and conveyed before a justice, who may commit him to prison for any time not exceeding one calendar month, and this imprisonment is not to affect any proceedings for the penalty incurred for selling without a licence. On the production, within a week, of the licence, the deposit of £10 is to be returned by the officer.

An auctioneer who has duly paid the licence-duty is not liable, in the city of London, to the penalties for acting as a *broker* without being admitted agreeably to 6 Anne, c. 16.

An auctioneer selling within the limits of the London district must give *two days'* notice in writing signed by himself, specifying the day when the auction will begin, and then, in

twenty-four hours after, deliver a catalogue signed by himself or known clerk, enumerating all the articles to be sold at the auction. Acting without limits of the head office in any part of Britain, to give *three* days' notice of sale to collector of excise, with a catalogue in like time. Penalty for omission £20, 19 G. 3, c. 56, s. 9.

A licensed auctioneer going from town to town in a public stage coach, and sending goods by public waggons, and selling them on commission, by retail or by auction, is a *trading person*, within the 50 G. 3, c. 41, s. 6, and must take out a hawker's and pedlar's licence; so, likewise, a person travelling in this manner, and having packages of books, &c., sent after him by public conveyance, taking rooms at each town, and there selling such books, &c., by retail or by auction, is a trading person, within the seventh section of the same act.

Auctioneers must be well skilled in their duties; and if their employers sustain any damage through them, an action will lie. They must make amends if they sell the property for less, or in a way contrary to the instructions of their employer.

If an auctioneer pay over the produce of a sale to his employer, after receiving notice that the goods were not the property of such employer, the real owner of the goods may recover the amount from the auctioneer.

Auctioneers cannot become the purchasers of property entrusted to them to sell, at a less value than its real worth, unless they can prove that the owner was acquainted with its real value.

A warranty by an auctioneer, pursuant to instructions, as to the soundness or title of the article offered, will not bind him, except made on his *own* responsibility; but to relieve him, he must disclose the name of his employer at the time of sale.

If the owner put the price under a candlestick in the room, which is called a *dumb bidding*, and it is agreed that no bidding shall avail, if not equal to that, it was held to be an actual bidding of so much, to supersede smaller biddings at the auction.

If the owner of goods, or an estate, put up to sale by auction, employ *PUFFERS*, to bid for him, without declaring it, and there is only *one* real bidder, who by means of the puffers, is induced to purchase at a high price, such purchaser shall not be compelled to complete the contract, 6 *T. R.* 642.

So also if an auction is declared to be a sale "without reserve," the employment of a puffer by the vendor to bid for him, was held to render the sale void, and to entitle the purchaser to recover back the deposit, 15 *Mees & W.* 367.

When the owner of an estate intends only to put up the estate at a certain price, and not to bid for it, in case of an advance, no previous notice of his intention need be given.

If an auctioneer sell an estate without sufficient authority, so\*

that the purchaser cannot obtain the benefit of his bargain, the auctioneer will be compelled to pay all the costs and loss the buyer may have incurred.

If an auctioneer give credit to a vendee, or take a bill or other security for the purchase-money, it is at his own risk, and the vendor can compel him to pay the money.

An auctioneer writing the name of the purchaser in the catalogue, binds both the buyer and seller to the bargain.

Unless an auctioneer disclose the name of his principal, an action will lie against him for damages for breach of the contract.

Where a life interest was sold by auction "without reserve," the vendor having entered into an agreement with a party to bid £30,000, at which price he was to become the purchaser, unless there should be a higher bidding, but the agreement was not disclosed, and the defendant became the purchaser at the price of £50,000; the tenant for life afterwards died, the Court of Chancery holding the transaction tainted with *reserve*, refused a specific performance, *Robinson v. Wall*, Jer. Dig. 1848. 15.

Goods sold remain at the risk of the seller, while anything remains to be done by him to ascertain the price; but afterwards the property is changed by the sale, and, whether injured, or destroyed by fire, or otherwise, it will be at the risk of the buyer.

If a vendor cannot make a good title, and the purchaser's money has been lying idle, the vendor must pay interest to the purchaser, *Babington on Auctions*, c. 5, s. 1.

An auctioneer receiving a deposit, to be paid over on the completion of the purchase, is regarded as a stakeholder, and as such is not liable for interest, even though he may have derived a profit from the use of the money. On the other hand, if the money be lost by his mode of employing it, he will be liable, 1 *Burn. & Adol.* 577.

A clause is usually inserted in the conditions of sale, of forfeiture of the deposit, re-sale, and compensation for loss on re-sale; but there is no doubt that, if this condition were omitted, the vendor would be entitled to retain the deposit, and recover any damage beyond it, in case the contract was avoided by the sole default of the purchaser.

When an estate has been generally advertised for sale by auction, and is disposed of by private contract, persons attending for the purpose of becoming purchasers may recover from the seller, or, if the auctioneer will not disclose the name of his principal, then from him, the expenses of the attendance at the place of sale; hence the common precaution in the advertisement, "unless previously sold by private contract."

A bidder at an auction may retract his bidding any time before the hammer is down, unless this is precluded by the conditions of sale.

## II. APPRAISERS.

By 13 & 14 V. c. 97, every person, except a licensed auctioneer, who for hire exercises the occupation of an appraiser to value property, repairs, and labour, must take out an annual forty-shilling licence. Acting without such licence, penalty £50.

Appraisers omitting to write and set down in figures every valuation made by them, with the full amount on paper duly stamped, and within fourteen days deliver the same to their employers, to forfeit £50. No person to receive or pay for an appraisement, unless the same is written on duly stamped paper, on pain of £20. Although the appraisement fills several sheets, a stamp is only requisite for that which contains the aggregate amount.

According to an old law, appraisers valuing goods too high, are obliged to take them at their own valuation, 11 Edw. 1, st. *Acton Burnel*.

## CHAPTER XXIII.

*Master and Servant.*

THERE are four sorts of servants recognised by the laws of England: *first*, operatives or skilled labourers, the special statutes relating to which have been mostly abolished; *secondly* menials, or such as live within the household of the master; *thirdly*, labourers, chiefly those employed in agriculture, who are hired by the day, the week, the year, or other term; *fourthly*, apprentices, whose service is regulated by deed of indenture.

If the hiring of a servant be general without any particular time mentioned, the law construes the hiring to be for a year; and in that case, a quarter's warning must be respectively given prior to the expiration of the term. But this refers chiefly to servants in husbandry, under 5 Eliz. cap. 4; for if no special contract be made, a domestic or menial servant is entitled only to a month's warning, or a month's wages in lieu of it, *Robinson v. Hindman*.

If a female servant marry, she must nevertheless serve out her term, if insisted on, and her husband cannot take her out of her master's service.

A servant may be discharged, without notice, for incontinence or moral turpitude. So, also, if a servant be taken into custody for any offence, and legally detained from his master's service, the master is authorized in discharging him, on payment of such wages only as are actually due; but if the offence with which the servant is charged was committed before the time of hiring, an order from a justice is deemed necessary to warrant

his discharge. Any gross misconduct or dereliction of duty, as sleeping from home all night without leave, or wilfully absenting himself when he knew he would be wanted, authorizes the dismissal of a servant without warning.

If a servant, hired for a year, happen, within the time, to fall sick, or be hurt, or disabled, in the service of his master, the master cannot put him away, or abate any part of his wages for that time.

*Liveries*, or other clothes supplied to the servant at the master's expense, continue the property of the master, and, although worn by the servant, cannot be taken away, or otherwise disposed of, without the consent of the master.

A master may support his servant in an action at law against a stranger, or may bring an action against another for beating or maiming him, assigning as a ground for the action a loss of service: or he may even justify an assault in his defence; as may a servant in defence of his master. So, also, a master may maintain an action against any person for seducing or enticing his servant away, as well as against the servant for unjustifiably quitting his service; and it is said, that where without enticement a servant quits his service without just cause, an action will lie against any person retaining him with a knowledge of the manner in which he left his master.

## II. REPRESENTATIONS OF CHARACTER.

A master is not bound to give a servant a character, 3 *Esp.* 201; but if he do give a character, he must take care to give a true one; though, if the character be given without malice, and to the best of his knowledge, no action lies.

If any person falsely personate any master or mistress in order to give a servant a character; or if any master or mistress knowingly give in writing a false character of a servant, or account of his former service; or if any servant bring a false character, or alter a certificate of character, the offender forfeits, upon conviction, £20, with 10s. costs, 32 G. 3, c. 56.

By the 9 Geo. 4, c. 14, no one is liable for any representation of the character, conduct, credit, or ability of another, in order that the latter may obtain credit, money, or goods, unless such representation be made in *writing* signed by the party to be charged therewith.

## III. LIABILITIES OF MASTERS AND SERVANTS.

In general, masters are liable for the acts of their servants, done in course of business, by their command, expressed or implied.

If a servant commit a trespass by the command of his master, the master is guilty of it, though the servant is not

exonerated ; for he is only to obey his master's *lawful* commands. If an innkeeper's servant rob his guests, the master is bound to make restitution. So, if I pay money to a banker's servant, the banker is answerable for it ; but, if I pay money to a clergyman or physician's servant, whose usual business is not to receive money for his master, and he embezzle it, I must pay it over again. If a steward lease a farm, without the owner's knowledge, the owner must stand to the bargain ; for this is the steward's usual business.

A wife, a friend, or relation, that usually transacts business for a man, are, so far, his servants : and the principal must answer for their conduct.

Again, if I deal, usually, with a tradesman, by myself, or constantly pay him ready money, I am not answerable for what my servant buys on trust ; for here is no implied order to trust my servant ; but if I usually send him upon trust, or sometimes upon trust and sometimes with ready money, I am answerable for all he takes up ; for the tradesman cannot possibly distinguish when he comes by my order, and when he comes upon his own authority.

Lastly, a master is answerable for the *negligence* of his servant. If a smith's servant lame a horse while he is shoeing him, or if the waiter at a tavern sell a man bad wine, whereby his health is injured, an action lies against the master, not against the servant. A master is chargeable if any of his family lay or cast anything into the street or highway, to the injury of an individual, or to the common nuisance of the public : for the master has the superintendence and charge of his household. But when the act of the servant is *wilful*, the master is not responsible, unless the act is done by his command or assent.

Servants are bound to discharge their duty with care, diligence, and fidelity, and are answerable for gross carelessness or wilful neglect ; but they are not answerable for any loss or injury which may unavoidably happen in the course of their avocations. So that the practice of some masters and mistresses, of deducting from servants' wages the value of articles accidentally lost, broken, or injured, is illegal, and cannot be defended, unless it was expressly stipulated at the hiring the servant should be liable to make good such damages.

If a servant, through negligence, set fire to a dwelling-house, he is subject by the 14 G. 3, c. 78, to a fine of £100 ; or, in default of payment, may be committed to the house of correction, to hard labour, for eighteen months.



## CHAPTER XXIV.

*Working Classes.*

IN the last chapter was exhibited the general civil relations established by the laws between masters and servants; in this will be brought together the statutory provisions made for regulating mills and factories, and the employment of artificers, labourers, and apprentices; for the arbitration of disputes between masters and workmen; for fixing the coin or commodity in which wages shall be lawfully paid; for the establishment of free libraries, baths, and washhouses, the protection of apprentices, and the regulation of lodging-houses; and also the laws made for protecting and encouraging those saving, friendly, and provident institutions, especially intended for the benefit of the Working Classes. These different subjects will be comprised under the following heads:—

1. *Friendly Societies.*
2. *Industrial and Provident Societies.*
3. *Free Libraries and Museums.*
4. *Saving Banks.*
5. *Loan Societies.*
6. *Benefit Building Societies.*
7. *Combination Laws.*
8. *Seduction of Artificers and Exportation of Machinery.*
9. *Arbitration of Disputes.*
10. *Mills and Factories.*
11. *Mines and Collieries.*
12. *Payment of Wages in Goods.*
13. *Artificers and Labourers.*
14. *Servants and Apprentices.*
15. *Public Baths and Washhouses.*
16. *Labourers' Dwellings.*
17. *Lodging-houses for the Labouring Classes.*
18. *Common Lodging-houses.*

## I. FRIENDLY SOCIETIES.

These institutions have long existed in this country; but, in 1793, the salutary objects they sought to attain were so apparent, and the number of persons interested therein so great, that it was thought expedient to render them an object of legislative protection and regulation. During late sessions of parliament, the laws relative to societies of mutual assurance have undergone very elaborate inquiries, and such alterations were sought to be introduced as seemed likely to avert the failure that had unhappily befallen some institutions, owing to the mistaken principles on which they had been conducted.

In 1855, all the acts relating to these societies, from the 33 G. 3, c. 54, to the 18 V. c. 101, were wholly repealed, so far as they relate to friendly societies, and their provisions consolidated and amended by the 18 & 19 V. c. 63. But by ss. 2-4, societies under former acts are to continue, their rules to remain in force, their enrolments to be sent to the registrar, and all their contracts, bonds, &c., to continue in force. Such subsisting societies as shall not hereafter effect insurances to any person of any sum exceeding £200, or any annuity exceeding £30 per annum, are to enjoy the privileges conferred by this act on societies established under its provisions. Three registrars are appointed, one for England and one for Ireland, both to be barristers, and one advocate for Scotland, all to be of not less than seven years' standing; the salary for the present registrar for England not to be less than £1000, the other two not exceeding £800 per annum, besides the expenses of their office. Any number of persons are empowered under this act to establish a friendly society, by subscriptions or donations: 1. For insuring a sum of money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the wife or child of a member; 2. For the relief of the members, their husbands, wives, children, brothers or sisters, nephews or nieces, in old age, sickness, or widowhood, or the endowment of members or nominees of members at any age; 3. For any purpose which shall be authorized by one of her majesty's principal secretaries of state, or in Scotland by the lord advocate, as a purpose to which the powers and facilities of this act ought to be extended. But no member to contract for an annuity exceeding £30 per annum, or a sum payable on death, or on any other contingency, exceeding £200, ss. 4-9.

No money is to be paid on the death of a child without a copy of the entry of the registrar of deaths, the amount not to exceed, whether from one society or more, £6 for a child under five years of age, or of £10 for a child between five and ten years of age; the registrar of deaths to be paid a shilling for the copy of the entry, and not to furnish more than one without an order from a justice of the peace. Benevolent societies, if their rules are transmitted to the registrar and found not to be inconsistent with this act, are to receive a certificate, and be entitled to its privileges, ss. 10, 11.

Societies may be dissolved by the votes of five-sixths in value of the then existing members called together at a special meeting, every member to be entitled to one vote, and an additional vote for every five years that he may have been a member; or two or more societies may unite, or one society may transfer its engagements to another on such terms as may be agreed upon by the major part of the trustees or the majority of members at a general meeting convened for the

4 purpose. Minors may be elected members of the society, but not to hold office during their minority. Trustees, if empowered by a majority of the members, may purchase, build, or hire any buildings, with lands not exceeding one acre, for the purpose of holding the meetings of the society; or with the like consent may sell, let, or exchange, or mortgage the same; but the money is to be raised according to the rules of such society on such behalf invested. Trustees are to be appointed by a majority of members present at a meeting of the society, and the property of the society vested in them; they are authorized to maintain actions in any court of law or equity brought by or against them; but not to be liable for any deficiency of the funds of the society, but only for the moneys actually received by them on account of the society. If any officer die, become bankrupt, or insolvent, having in his hands by virtue of his office, moneys, or other property of the society, his executors, assignees, trustees, or the sheriff, shall, upon a written demand from the trustees, deliver up the same: and frauds are punishable by fine or imprisonment, ss. 11-24.

Before any friendly society is established under this act, the rules and regulations in a defined form are to be settled, such rules providing that all moneys received or paid for the various objects of the institution shall be entered into and kept in a separate account; and copies of the rules are to be sent to the registrar, and his certificate obtained, for which certificate no fee is to be payable, but a certificate of an actuary of five years' standing in some life office must be sent with the copies in cases of tables of annuities being included. The rules may be altered, amended, or rescinded, subsequent to registration, but copies of them must be sent to the registrar, and his certificate obtained; and whenever the place of meeting is changed, notice must be given to the registrar. The giving of false copies of the rules and regulations of a society, or of any alterations that may have been made, is punishable as a misdemeanor. Copies of the rules and regulations signed by the registrar, are to be received as evidence in all courts without further proof, s. 29.

Any sum not exceeding £50 may be paid to the proper representative on the death of any member without taking out letters of administration in England or Ireland, and without confirmation in Scotland; the trustees are indemnified, if, after having paid the sum due to the person appearing as the proper representative, any other claim should be made, but the action may lie against the persons so receiving the money. The funds of the society are to be invested, according to the decision of a majority, in savings' banks, the public funds, or with the commissioners of the national debt, or in such other securities as the majority shall direct, not being purchases of houses or land (save for the purpose of holding their meetings),

nor shares in joint stock companies, nor on personal security, except to members of a certain standing, to the amount of not more than half the amount of his life assurance. On the death of a trustee, or the cessation of his office from any cause, the stock standing in his name may be transferred to a new trustee on the direction of the registrar. No copy of rules, letter of attorney, receipt, or other document, to be liable to stamp-duty in any society not insuring to an amount of more than £200 on the death of a member, or of annuities not exceeding £30 per annum, ss. 30-37.

Members cannot belong to more than one such society, so as to receive more than the above sums; a declaration is required on entering that they have not done so, and any fraudulent declaration is punishable as a misdemeanor. Disputes are to be settled according to the rules of the society, and to be without appeal; but in cases of societies already established, whose rules refer the settlement of disputes to justices of the peace, they are to be referred to and decided by the county courts; and where the rules do not prescribe a mode of settling disputes, or where arbitrators do not agree, they also are to be decided by the county courts in England, in Scotland by the sheriff, and in Ireland by the assistant barrister, within their respective districts. In the case of societies whose rules are not certified, the disputes between the society and its own members are to be settled in the same manner as in those of certified societies. An annual return is to be made in the first three months of each year of the funds and effects of the society during the preceding twelve months, or a copy of the annual report to be sent to the registrar, and every five years a return of the rate of sickness and mortality within that period; the registrar laying before parliament a report of his proceedings, and of the principal matters connected with friendly societies annually, ss. 38-46.

Where the rules of any society already established have provided that any member shall be deprived of any benefit by reason of his enrolment or service in the militia, the trustees are to require an extra contribution from such member not exceeding one-tenth of the usual rate, while he is serving out of the United Kingdom, or they may suspend his claim to any benefits, while so serving, together with all claims for contribution, until his return, when he is to be replaced on the same footing as before. This act extends to the United Kingdom, and applies to all societies constituted under the Industrial and Provident Societies Act of 1852.

## II. INDUSTRIAL AND PROVIDENT SOCIETIES.

In 1852 an act was passed, 15 & 16 V. c. 31, to legalize the formation of certain associations of working men, under the name

of Industrial and Provident Societies, and generally to entitle them to the immunities secured to friendly societies. Such societies may be instituted for carrying on any joint trade, or exercising in common any labour, trade, or handicraft, except the working of mines, minerals, or quarries, beyond the limits of the United Kingdom, or the business of banking within the United Kingdom or elsewhere. The act defines the rules of such societies. Interests of members not transferable, but payable on withdrawal. Awards of arbitrators may be enforced by county courts if sum in dispute be within their jurisdiction. Amount assured limited to £100, as in friendly societies; but the provisions of friendly societies, giving them priority over other creditors as to estate of officers, and exemption from stamp duty in certain cases, do not extend to the new societies.

By 17 V. c. 25, certain changes are made in the legal procedure of these societies. By s. 1, suits are to be carried on in the name of one of the officers of the society appointed for that purpose. Society to appoint two such officers to sue and be sued, and their names and description to be returned to the registrar of friendly societies; in default of society appointing officers, the trustees to appoint them. The time for the appointment of these officers is extended by 19 & 20 V. c. 40, till one month after the passing of act. The 17 V. c. 25, applies to all societies constituted under the act of 1852.

### III. FREE LIBRARIES AND MUSEUMS.

The 18 & 19 V. c. 70, repeals former act in respect of Public Libraries and Museums, but does not affect anything done. The new act may be adopted by the inhabitants of any municipal borough, if, by the last census, the population exceed 5000, and two-thirds of the ratepayers consent. Rate levied for the purpose of carrying out the act not to exceed one penny in the pound. If any meeting convened for the purpose of considering the act determine against its adoption, no other meeting to be called for a year. Act may be adopted in the city of London, if two-thirds of persons rated to the consolidated rate assembled at a public meeting assent.

### IV. SAVING BANKS.

These institutions are established under the authority of parliament for the deposits of small sums of money, to accumulate by compound interest, and which the depositors may at any time withdraw from the bank, without charge or deduction beyond the necessary expenses attending their management.

By 9 G. 4, c. 92, the laws relating to saving banks were consolidated and amended; and it is according to the provisions of this act that these useful societies are now established and regu-

lated. According to this act the rules for the formation of a society must be approved by the justices at the general quarter sessions, and by the commissioners for the reduction of the national debt. Such rules to be entered in a book, to be open to the inspection of the depositors; and, by 7 & 8 V. c. 83, two written or printed copies sent to the barrister appointed to certify them. The barrister to ascertain whether the rules be conformable to law; and for giving a certificate of such conformity, or pointing out where they are repugnant, to receive from the society not more than a guinea for his fee; the transcript, signed by two trustees, together with the certificate, is then to be submitted to the justices at quarter-sessions, who may reject such rules as they disapprove; and the clerk of the peace, within ten days, shall give notice of such rejection to the two trustees. Rules relating merely to the hours of attendance at the institution need not be submitted to the barrister, 9 G. 4, c. 92, ss. 1-4.

No bank to have the benefit of the act unless it be expressly provided in the rules, that no treasurer, trustee, or manager shall profit by any deposit beyond his *actual expenses*; but allowances may be made for the salaries of other officers, and the charges of management. Treasurer, and *every officer* receiving a salary, is to give security for the faithful discharge of his trust, ss. 6, 7.

Persons entrusted with the money, *books, papers, property*, or effects of the society, to surrender them on the order of not less than *two* trustees and *three* managers, or of a general meeting of trustees or managers, s. 10.

Deposits for the benefit of any person, *under* the age of twenty-one years, may be received, and such depositor receive his share and interest in the funds of the institution.

When deposits are made by married women, without notice that they are married, or when women marry after having made deposits, the trustees may *pay money in respect of such deposits*, to such women, unless the husbands give notice of the marriage to the trustees, and require payment to be made to them.

No person to pay money into a saving bank, by ticket, number, or otherwise, without disclosing his *name, business*, and *residence*, to be entered in the books of the institution. But trustees may subscribe on behalf of others, s. 33.

Subscribers to one saving bank not to subscribe into *any other*, nor to open a new account in the bank; a declaration to this effect to be made at the time of making the first subscription; and persons violating this regulation to *forfeit their deposits*.

Trustees not to receive from any one present or future depositor more than £30 in any one year, nor more than £150 in the

whole; and when the principal and interest of a depositor amount to £200, *the interest to cease.*

The whole deposit may at any time be transferred from one saving bank to another, the depositor receiving a certificate from the trustees, s. 39.

Depositors dying, leaving any sum exceeding *fifty pounds*, the same not to be paid until after administration; the person claiming to administer to produce certificate of amount in the bank; and no duty to be paid on probate or legacy, where the property of a depositor does not *exceed* £50.

When disputes arise they may be referred to two arbitrators, and in case of their not agreeing, be *settled by the barrister* appointed by the national debt commissioners, whose award will also determine by which party his fee of a guinea shall be paid.

Trustees annually to make up, to 20th November, an account of their funds and expenses, and a duplicate of such account to be affixed in a conspicuous part of the institution, for the information of depositors; every depositor to be entitled to receive a *printed copy of the annual statement*, on payment of one penny.

Interest payable to depositors to be computed to 20th May and 20th November, half-yearly or yearly.

The 7 & 8 V. c. 83, reduced the interest of all moneys invested by trustees of saving banks in the national funds to the rate of £3 5s. per cent., and declared that the maximum of interest allowed to depositors should not exceed £3 0s. 10d. per cent.

The acts extend to England and Ireland, but as respects Ireland, the 11 & 12 V. c. 133, gives power to trustees and managers, to limit their responsibility by a notice in writing to a specific amount, not less than £100, and to be then no longer liable for any deficiency beyond the amount specified, except for money actually received and not paid over or accounted for. This provision to be enrolled as one of the rules, and the names and residences of the managers, together with the trustees, are to be affixed in every office where deposits are received, with the amount to which, individually or collectively, their responsibility is limited. Act continued by 15 & 16 V. c. 60.

*Purchase of Government Annuities.*—By 16 & 17 V. c. 45, the national debt commissioners may receive money from depositors, &c., for the purchase of annuities. They may grant, to or for the benefit of any depositor in a savings bank, or other person whom the commissioners shall think entitled to be or to become a depositor in a saving bank, any immediate or deferred life annuities depending on single lives, or immediate annuities depending on joint lives with benefit of survivorship, or on the joint continuance of two lives, to any amount not less than £4, nor more than £30 in the whole, to

or for the benefit of any one person, and to receive payment for such immediate life annuities in one sum, or for such deferred life annuities either in one sum or in annual sums, payable for fixed periods. Grants of annuities may be made to a husband and wife, though the one or the other may already have an annuity to the full amount, and in the cases of females, infants, and idiots; or persons of unsound mind, to trustees on their behalf; but no such annuities are to be granted to or for the benefit of any person under the age of ten years. The annuities granted under this act are not to be assignable, except in cases of bankruptcy or insolvency. Persons who have contracted for a deferred annuity, who may be unable to keep up their payments, may have an annuity granted, either immediate or deferred, at their own option, equivalent to the amount of the money paid.

#### V. LOAN SOCIETIES.

These were established under 5 & 6 W. 4, c. 23, but that act has been repealed and amended by 3 & 4 V. c. 110. Persons desirous of forming loan societies, or who have formed them for creating a fund for making loans to the industrious classes, and taking repayment by instalments with interest, must cause the rules framed for their management to be certified and deposited. Three transcripts of rules to be made, written, or printed, signed by three members, and countersigned by clerk or secretary, to be submitted to the barrister appointed to certify the rules of saving banks; the barrister to certify the legality of the rules for a fee of one guinea; and one transcript to be kept by the barrister, another returned to the society, and the third sent to the clerk of the peace, to be confirmed by the court of quarter-sessions. No confirmed rules to be altered, except at a general meeting of the members of the society. Rules to be entered in a book kept by the officer of the society. Property of society to be invested in one or more trustees. Debentures may be issued for the sums deposited without liability to stamp duty. Trustees signing debentures not personally liable, unless specially undertaken. Sums under £50 deposited in any loan fund are payable by the society within three calendar months, without probate, to the representative of any deceased debenture holder; treasurer to give security. Society not to lend to any person at the same time a greater loan than £15, and no second loan to be made till the first loan has been repaid. No note or security liable to stamp. Securities not transferable by endorsement or otherwise. Loans recoverable by clerk or treasurer in County Courts. On giving form of application, 1s. 6d. demandable for inquiry into the character and solvency of the applicant, and his proposed sureties. Discount at the rate of 12 per cent. per annum may be deducted on all advances; and the principal sum be re-



paid conformably to the rules of the society. Clerks, &c., overcharging, liable to penalties of usury. Instalments not to be paid in advance, nor loans to be balloted for. Act continued by 16 & 17 V. c. 109, to October, 1856, and to the end of the next session of parliament.

#### VI. BENEFIT BUILDING SOCIETIES.

For the encouragement and regulation of these it is provided, by 6 & 7 W. 4, c. 32, that persons in Britain or Ireland may form themselves into such societies, for the purpose of raising, by monthly or other subscription, shares not exceeding £150 each; such subscription not to exceed 20s. per month for each share; and each member to receive the amount of his share out of the funds of the society for the erection or purchase of a dwelling-house, or other real or leasehold estate, to be secured by mortgage to the society, until the whole amount of his share has been repaid to the society with interest, and all fines or other payments incurred in respect thereof. Societies to frame rules and impose fines. No member to receive interest on his share until the whole of his share has been realised, except on his withdrawal according to the rules of the society. Provisions of the friendly societies acts, so far as applicable, extended to the building societies; but not entitled to the benefits of the statute unless their rules are certified and deposited as directed by those acts. Transfer of shares and rules exempt from stamp duty.

Under the provisions of the act the society is not precluded from making loans on mortgage to its own members, and the trustees may maintain an action of covenant against a member for the amount of his subscriptions and fines, although its rules provide for referring disputes between the trustees, officers, and other members; but it seems the intention of the Legislature was to prevent any member from acquiring a larger interest in the funds than £150 in respect of their shares in the society. *Jer. Digest*, 1848, 43, 1.

#### VII. COMBINATION LAWS.

It has been the spirit of recent legislation to consider labour as a commodity, the price of which is best determined by free competition between the workman and his employer. As a consequence, the laws which empower justices to fix a rate of wages, and punish workmen for combining to raise wages and determine the hours of labour, have been abolished. By 6 G. 4, c. 129, all the statutes commencing with the 33 E. 1, down to the 5 G. 4, are repealed so far as they refer to combinations for regulating labour; but, for the protection of workmen, it is provided,

that if any person, by *violence, threats, molesting, or obstruction*, endeavour to force any workman to leave his employer, or to prevent him from being employed: or to induce him to belong to any club, or to contribute to any fund, or to alter the mode of carrying on any manufacture, or to limit the number of apprentices: every person so offending, or aiding or assisting therein, shall be imprisoned with or without hard labour, for any time not exceeding three calendar months.

Workmen are not punishable for meeting to consult and determine the rate of wages, or the hours of labour, or for entering into agreements, verbal or written, among themselves, to fix the rate of wages, or the hours they shall work. The same protection is extended to employers who meet for similar objects.

Offenders may be called upon, equally with others, to give evidence in behalf of any prosecution under this act, and are indemnified against subsequent informations against themselves.

Witnesses summoned to appear, refusing to attend, may be apprehended by warrant, and imprisoned for three calendar months, or till they submit to be examined and give evidence.

No justice, being also a master in the particular trade or manufacture in or concerning which any offence is charged to have been committed, can act as justice under the act.

Of unlawful *Oaths and Societies*, we shall speak hereafter.

#### VIII. SEDUCTION OF ARTIFICERS.

By several statutes, severe penalties, with imprisonment, were inflicted on persons who *seduced* artificers engaged in the cotton, linen, woollen, or other manufacture, to settle in foreign parts. These enactments were framed with a view to prevent the communications of our inventions and discoveries to other nations. But the Legislature having discovered the futility or injurious tendency of such precautions, the statutes are repealed by 5 G. 4, c. 97, so far as they refer to the seduction and emigration of artificers.

By 21 G. 3, c. 37, if any person put on board any ship, not bound to any place in Britain or Ireland, or shall have in his custody, with intent to export, any engine, tool, or implement, used in the *cotton, woollen, linen, or silk manufacture*, he forfeits the sum of £200, with imprisonment for twelve calendar months, and till the forfeiture be paid. And every captain and custom-house officer who shall knowingly receive the same, or take an entry of it, forfeits £200. But such penalties are not likely to be incurred, since a discretionary power has been vested in the Board of Trade, upon whose report to the Treasury an export licence may be obtained on the payment of two guineas.

## IX. ARBITRATION OF DISPUTES.

The 5 G. 4, c. 96, repeals former statutes for the arbitration of disputes between master and workman, and substitutes new regulations for settling all disputes which may arise respecting wages, the hours of labour, the finishing of work, the finding of implements, and the compensation to be given for any new or altered manufacture. But nothing in this act empowers the justices to establish a *rate of wages*, or price of labour, unless with the mutual consent of master and workmen.

When differences arise on any of the above subjects, the parties may mutually agree to submit their case to the determination of a magistrate. If they cannot, agree to such a reference, the justice is empowered, on complaint of one of the parties, to nominate not less than four, nor more than six persons, half master manufacturers, agents, or foremen, and half workmen; out of the number so nominated, the master chooses one arbitrator, and the workman chooses another, who have full power to hear and finally determine the question in dispute.

If one of the arbitrators refuse to act, the justice may appoint another, the expense being defrayed by the party whose referee refused to act; in case the second arbitrator chosen shall not attend at the time and place appointed, the other arbitrator may proceed by *himself*, and determine the dispute, the award of such sole arbitrator being conclusive.

Arbitrators may examine, upon oath, the parties and witnesses; but their determination must be made within two days after their nomination.

Justices may commit persons to prison who refuse to attend and give evidence on summons by the arbitrators.

In case the arbitrators cannot agree, the justice is appointed *umpire*, who is not to exceed two days in making his decision from the expiration of the time allowed to the arbitrators to make and sign their award.

No justice being a master manufacturer can preside.

Any other mode to which the *parties may agree*, for the settlement of their differences, is equally binding, and the same process of enforcing the award by distress, sale, and imprisonment, is allowed.

Either master or workman may appoint in writing any person to act for him.

When any married woman, or infant under twenty-one years of age, has cause of complaint, in any of the cases provided for by this act, the proceedings may be carried on by the husband, or by the parents or kindred of the child.

*Work* not objected to within twenty-four hours after delivery cannot afterwards be complained of.

Complaint by any workman of *bad materials* must be made

within three weeks after receiving them, and all other complaints must be made within six days after the cause of such complaints shall have arisen.

Money directed to be paid by any award, not paid within two days, the same may be levied by distress, and in case no sufficient distress can be had, the party may be imprisoned for any time not exceeding three months.

When the levying of a distress may be attended with ruinous consequences to a family, the justices have the option of committing the party to prison in lieu of such distress.

*Table of fees*, to be levied under the act, to be hung up in every place where general, quarter, or other sessions of the peace are held.

#### X. MILLS AND FACTORIES.

Several acts have been passed for the appointment of inspectors, for the *preservation of the health*, and for regulating the education and hours of work of children employed in mills and factories. The most general of these acts is the 7 & 8 V. c. 15.

By the 3 & 4 W. 4, c. 103, persons under eighteen years of age are not allowed to work at *night*, that is, between half-past eight in the evening and half-past five in the morning: but not to extend to apprentices or others employed in certain processes, nor to children above thirteen employed in packing, nor to lace manufactories. Children whose hours of labour are limited to forty-eight weekly, required to attend a *school* chosen either by parents or inspector, and one penny in every shilling to be deducted from the child's earnings for the expense thereof. Unlawful to employ children, unless they produce weekly to the factory master the schoolmaster's ticket of attendance. Inspectors may frame regulations for the enforcement of the act. Interior walls of mills and ceilings of rooms to be lime-washed every year.

By 7 & 8 V. c. 15, every inspector shall have power to enter every part of any factory at any time, by day or by night, when any person shall be employed therein, and to enter by day any place which he shall have reason to believe to be a factory, and to enter any school in which children employed in factories are educated, and at all times to take with him into any factory the certifying surgeon of the district, and any constable or other peace-officer whom he may need to assist him, and shall have power to examine, either alone or in the presence of any other person as he shall think fit, every person whom he shall find in a factory or in such a school, or whom he shall have reason to believe to be or to have been employed in a factory within two months next preceding the time when he shall require him to be examined touching any matter within the provisions of this

act, and the inspector may require such person to make a declaration of the truth of the matters respecting which he shall have been examined. Inspector also to have power to examine the registers, certificates, notices, and other documents kept in pursuance of this act; and every person who shall refuse to be examined, or refuse to sign his name or affix his mark to a declaration of the truth of the matters respecting which he shall have been examined, or who shall in any manner attempt to conceal or otherwise prevent any child or other person from appearing before or being examined by an inspector, or who shall prevent or knowingly delay the admission of an inspector to any part of a factory or school, or shall prevent an inspector from pursuing his examinations, shall be deemed guilty of wilfully obstructing the inspector in the execution of the powers intrusted to him.

All persons on beginning to occupy a factory are required to send, within one month, a written notice to the Office of the Factory Inspectors, London, stating the name of the factory, the place, the post-office, the nature of the work, and amount of the moving power, and the name of the firm.

The inspectors are empowered to fix the surgeon's fees, and appoint the times of his visits, but so that the fee shall not exceed 1s. for each person where he examines more than one, with 6d. for each half mile over one mile from his residence; but the fees in no case to exceed 5s. for a visit, unless more than ten persons are examined, then 6d. each; where the residence of the surgeon is within one mile, the fee not to exceed 2s. 6d., except to examine more than five, then 6d. each; and not more than 6d. is to be taken for a certificate signed elsewhere than at the factory; the occupier of the factory to pay the fees, deducting the same from the wages of the person certified, but not exceeding in any one case the sum of 3d.; where an agreement has been made between an occupier and a certifying surgeon, such agreement to be instead of fees.

By s. 18 it is required that where the interiors of factories are painted in oil, such paint shall be washed with hot water and soap at least once within every fourteen months; and if not painted in oil, then to be lime-washed every fourteen months.

No child or young person to be employed in the wet-spinning of flax, hemp, &c., unless means be employed for protecting them from being wetted, and where hot water is used, for preventing the escape of steam upon the workers.

The term "child" is explained to mean a person under the age of thirteen; and the term "young person" to mean a person of thirteen, and under the age of eighteen. The term "factory" is explained to mean any building or premises within the curtilage, in which steam, water, or any other mechanical power is used to work machinery employed in any process inci-

dent to the manufacture of cotton wool, hair, silk, flax, hemp, jute, or tow, either separately or mixed together, or mixed with any other material, or any fabric made thereof.

Mill gearing is not to be cleaned while in motion; machinery and wheel-races to be securely guarded and fenced, and in all cases of bodily injury the factory occupier or his agent shall give notice to the certifying surgeon, who is to send a copy of the same by post to the sub-inspector; the surgeon is then to examine into the nature and cause of such injury, and report the same, together with any other information relative to the accident, within twenty-four hours, to the inspector of the district: for this investigation the surgeon is to receive a fee of not more than 10s. nor less than 3s., as the inspector may direct.

In the observance of time, the inspector is to approve in writing of some public clock, or clock exposed to public view, as the one by which the hours of work and attendance are to be regulated.

Children of eight years of age, but not under, who have obtained a surgeon's certificate, may be employed in factories; no child to be employed more than *six hours and a half or seven hours in any one day*, and no child employed in the forenoon shall work after one o'clock in the same or any other factory, nor for the recovery of lost time, save where children work only on alternate days, or as afterwards provided for in silk factories. In factories where the daily labour of young persons is restricted to ten hours, children may also be employed for ten hours for alternate days; provided the person having the benefit of such child's wages shall cause such child to attend some school for at least five hours on each week-day preceding such day of employment: no child to be thus employed without a school certificate as directed in the schedule.

Ss. 33 & 34 provide for the recovery of time lost by the stoppage of the machinery or other accident, which is not to exceed one hour in each day, except Saturday; children and young persons may be employed at night for not more than five hours to recover time lost by drought or flood; but in every case previous notice must be given to the inspector, and a notice in a form directed to be fixed at the entrance of the factory. No child or young person to be employed for any purpose whatever after half-past four on Saturday afternoon.

No child or young person shall be employed more than five hours within an interval of at least thirty minutes for meal-time, nor of less than one hour either at one time or at different times before three o'clock; all young persons to have their meal-times at the same period, and not to be allowed to remain in any room where manufacturing processes are carried on. S. 37 directs that at least eight half-holidays shall be given

yearly in every factory, of which four are to be between March 1<sup>st</sup> and Oct. 1, previous notice thereof to be fixed at the entrance of the factory, in addition to Good Friday, Christmas-Day, and the day of the Sacramental Fast in every Scottish parish.

The 16 & 17 V. c. 102, makes further provisions by enacting that no child (that is, person under thirteen) shall be employed in any factory before six o'clock in the morning, or after six o'clock in the evening of any day, and no child shall be employed for any purpose on any Saturday after two o'clock in the afternoon. But children on any day but Saturday, from September 30 to April 1, may for one month be employed between seven in the morning and seven in the evening; notice being given to the inspector of such employment, and hung up in the factory. Children not to be employed in recovering lost time after seven in the evening.

**PENALTIES.**—Any person convicted of having employed a child or young person without having obtained a certificate from a schoolmaster, shall for every offence incur a penalty of not less than 20s. nor more than £3, unless the offence be committed at night, then the penalty to be not less than 40s. nor more than £5. Parent or person having a direct benefit from the child's or young person's labour, neglecting to cause their attendance at school as directed, to incur a penalty of not less than 5s. nor more than 20s. for each offence, unless it should be proved that such offence was committed without their cognizance or connivance. The penalty for not washing or lime-washing the walls as directed, to be not less than £3 nor more than £10, and £2 additional for every month for neglect after conviction. For not fencing machinery, a penalty not less than £5 nor more than £20. Suffering injury from the occupier not having the machinery properly fenced, or any driving-strap or band of which notice has been given by the inspector, to incur a penalty of not less than £10 nor more than £100, the whole or any part of such penalty to be applied for the benefit of the injured person, as the Secretary of State shall determine; but the penalty not to be incurred if the complaint of the inspector as to the danger had been previously heard and dismissed. The penalty for obstructing inspectors or sub-inspectors in the execution of their duties not less than £3 nor more than £10, except the obstruction be made to an examination of the factory at night, then to be not less than £20 nor more than £50. Every person convicted of giving or making use of false or counterfeited certificates, knowing them to be untrue, or wilfully conniving at making any false or counterfeited certificates, or any false entry in any register or other paper or notice, and every person signing a false declaration on any proceedings, to be liable to a penalty of not less than £5 nor more than

£20, or imprisonment for a term of not more than six months. Penalties for other offences to be not less than £2 nor more than £5.

The powers of the inspectors and the regulations in respect of the employment of children and women are, by 8 & 9 V. c. 29, extended to *calico print-works*.

By 9 & 10 V. c. 40, it is enacted, that no *ropery, ropewalk, or ropework* in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax or hemp, but only for laying or twisting or other process of preparing or finishing the cordage, and which has no internal communication with premises forming part of a mill or factory, except such as is necessary for the transmission of power, shall be deemed a mill or factory within the meaning of the Factory Acts, and applicable to children, young persons, or women in ropeworks.

**REDUCTION OF HOURS.**—By 10 V. c. 29, the hours of labour in factories, of persons under eighteen years of age, are reduced from *twelve* (to which they were limited under 3 & 4 W. 4, c. 103) to *eleven* in any one day from July 1, 1847; and from May 1, 1848, the hours of labour, of persons under eighteen, not to exceed *ten* in any one day, nor more than fifty-eight in any one week. These limitations as to hours of labour extended to *all females* above the age of eighteen years.

By 13 & 14 V. c. 37, no young persons, and no *young female above eighteen*, shall be employed in any factory before six o'clock in the morning, or after six o'clock in the evening of any day, except to recover lost time; and no young person or female above eighteen shall be employed in any factory either to recover lost time, or any other purpose, on any *Saturday*, after two o'clock in the afternoon. Meal times to be taken between half-past seven in the morning and six in the evening, in lieu of half-past seven. Young persons, or any female above eighteen, not to be employed in recovering lost time after seven in the evening. Sections 5 & 6 refer to the recovery of lost time, and as to employment of young persons and females from seven in the morning to seven in the evening, from Sept. 30 to April 1. Children above eleven years of age, employed in winding and throwing silk, may be employed as "young persons" under the act. Young persons and females above eighteen employed during meal hours, held to be employed contrary to the act.

The 7 & 8 V. c. 15 is amended by 19 & 20 V. c. 38, which explains that so far as it refers to *mill-gearing*, it shall apply only to those parts with which children and young persons and women are liable to come in contact, either in passing or in their ordinary occupation in the factory. Penalty, of £20, or



not less than £5, for omitting to fence off machinery after notice from the inspector.

#### XI. MINES AND COLLIERIES.

By 5 & 6 V. c. 99, the employment of females in any mine or colliery was prohibited after March 1st, 1843. From the same date no male under ten years of age was allowed to be employed in any mine or colliery; nor any one to be apprenticed under ten years of age, nor for longer than eight years, except in the cases of masons, joiners, engine-wrights, &c., who are occasionally employed underground. Every owner, body, or company employing persons contrary to the act liable to a penalty of not less than £5 nor more than £10 for each offence. Parents or guardians misrepresenting the age of children so employed may be fined 40s., and the employer's fine may be remitted if incurred through such misrepresentation. These regulations, however, are not to apply to persons employed about any mine or colliery if the employment is above ground.

Where there are vertical or other shafts, no steam or other engine is to be trusted to the care of a person under the age of fifteen, under a penalty of not more than £50 nor less than £20. In the case of a windlass, or gin worked by a horse or other animal, the driver to be considered the person in charge.

Proprietors of mines or collieries are forbidden to pay workmen their wages at any tavern or public-house, or in any buildings connected therewith. Wages so paid are to be recoverable as if not paid, and persons so paying are subjected to a penalty of not more than £10 nor less than £5 for each offence. Agent, servant, or contractor may be summoned and fined in lieu of the owner, if proved to have so acted without the knowledge of the owner.

By 13 & 14 V. c. 100, the Secretary of State is authorized to appoint in Britain one or more inspectors of coal mines to visit at reasonable hours, night or day, so as not to obstruct the working of the colliery, and inquire into the condition of the colliery, its works, machinery, ventilation, and mode of lighting, and all other matters relating to the safety of the persons employed about the same. The act is amended by 18 & 19 V. c. 108, and power given to the Secretary to remove inspector; but by s. 3 no land-agent, manager, or agent of a mine is to act as an inspector. The following general rules are to be observed in all coal mines:—

1. An adequate amount of ventilation shall be constantly produced at all collieries to dilute and render harmless noxious gases to such an extent as that the working-places of the pits and levels of such collieries shall, under ordinary circumstances, be in a fit state for working.
2. Every shaft or pit which is out

of use, or used only as an air-pit, shall be securely fenced. 3. Every working and pumping pit or shaft shall be properly fenced when not at work. 4. Every working and pumping pit or shaft, where the natural strata under ordinary circumstances are not safe, shall be securely cased or lined. 5. Every working pit or shaft shall be provided with some proper means of signalling from the bottom of the shaft to the surface, and from the surface to the bottom of the shaft. 6. A proper indicator to show the position of the load in the pit or shaft, and also an adequate break, shall be attached to every machine worked by steam or water power used for lowering or raising persons. 7. Every steam boiler shall be provided with proper steam gauge, water gauge, and safety valve.

Special rules are likewise to be framed for every colliery, subject to the approval of the Secretary of State; such rules, both general and special, are to be painted or printed, and shown in some conspicuous part of the colliery, and a copy given to every person employed therein. The inspectors are to see that these rules are complied with, or to inform against the owners or managers for neglect; and owners or managers of mines are to produce to them maps or plans of the mines, or, if not produced, they may require them to be made. Notice of accidents in mines is to be given to the Secretary of State, or to the Lord Advocate in Scotland, with the probable cause thereof, within twenty-four hours of their occurrence. Penalty for omission £10 or not above £20.

## XII. PAYMENT OF WAGES IN GOODS.

Efforts were made in the session of 1831 to put an end to what are termed "*tommy-shops*," and the practice, so general in various counties, of paying wages in goods, in lieu of coin or bank notes. For this purpose the 1 & 2 W. 4, c. 37, prohibits the payment of wages in goods, in the trades there mentioned; namely, to persons employed in any manufacture or process in iron or steel; or in mines of coal, iron-stone, limestone, and salt-rock; in getting of stone, slate, or clay; in making nails, chains, rivets, anvils, vices, spades, locks, or any other hardware made of iron or steel; or any plated articles of cutlery, or made of brass, tin, or other metal, or of japanned goods or wares; or in the spinning, dyeing, printing, or preparing any kind of woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufacture; or in making or preparing glass, porcelain, china, or earthenware; or in making or preparing bone, thread, silk, or cotton lace: in all these trades, all contracts must be made, and wages paid, in coin, without any stipulation as to the manner in which wages shall be expended. But the payment of wages in notes of the

Bank of England, or of any licensed banker, or in drafts payable to bearer on demand (the workman freely consenting to receive such drafts), is lawful.

Workmen may recover the whole or any portion of their wages not paid in coin; goods supplied by the employer, or any shop in which he is interested, not allowed to be set-off against any claim for wages, nor can any employer have any action for goods supplied on account of wages; and if the workman, his wife, or children, become chargeable, the overseers may recover any wages earned during the three preceding calendar months, and not paid *in cash*.

Employers entering into contracts, or paying wages otherwise than the act directs, forfeit for the *first* offence, not exceeding ten nor less than five pounds; for a *second* offence, not exceeding twenty nor less than ten pounds; for a *third* offence the offender is deemed guilty of misdemeanor, and may be fined any sum not exceeding one hundred pounds. Penalties are recoverable by any person suing for the same, before two justices, who have power to award any portion of the penalty to the informer, not exceeding twenty pounds. A partner is not liable in person for the offence of his co-partner, but the partnership property is liable.

Nothing in the act extends to domestic servants, or any servant in husbandry. Neither do its provisions extend to any contract, payment of wages, or deduction from wages, made or done on account of medicine supplied to a workman, or victuals dressed in the house of the employer, or sum advanced for rent, or any friendly or saving bank, or during sickness, or for education of children: in all which cases, contracts may be entered into, and wages paid as formerly.

This act extends to Great Britain.

### XIII. ARTIFICERS AND LABOURERS.

The jurisdiction of the magistrates under the laws about to be mentioned in this section, is limited to servants in husbandry, and the trades specified in the statutes, or the local district mentioned.

By the 5 Eliz. c. 4, all single men between twelve years of age and sixty, and married men under thirty years of age, and all single women between twelve and forty, not having any visible livelihood, are compellable, by two justices, to go out to service in husbandry, or certain specific trades. If any artificer or labourer, retained to work by the piece, leave his work unfinished, unless it be that his wages are not paid, or other *lawful* excuse, he may be imprisoned one month, and fined £5 to his employer.

Artificers and labourers hired by the day or week, shall, be-

tween the middle of March and September, be at their work at five o'clock in the morning, and continue it till between seven and eight in the evening; and between September and March, they are to be at work by break of day till night, bating the time for breakfast and dinner.

By 20 G. 2, c. 9, differences between masters and servants in husbandry, or artificers and handicrafts, colliers, keelmen, glassmen, and other labourers, may be determined by a justice of the peace, who is to examine upon oath, and make order for payment of wages, provided the sum in dispute does not exceed £10 with regard to servants, or £5 with regard to other persons; and, on non-payment within twenty-one days, it shall be levied by distress. The 31 G. 2 extends this act to all servants employed in husbandry, though hired for less than a year.

By the 4 G. 4, c. 34, if any servant in husbandry, handicraftsman, artificer, calico-printer, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, contract, in writing, to serve, and shall not enter into such service, or shall absent himself before the term of his contract be expired (whether such contract be in writing or not), or be guilty of any misconduct or misdemeanor, he may be committed to the house of correction to hard labour for not exceeding three months; or, in lieu, the whole or a proportional part of his wages may be abated, or he may be discharged from his contract or employment.

By 10 G. 4, c. 52, all the provisions in 4 G. 4, for enlarging the powers of magistrates in determining disputes between masters and workmen are extended to persons engaged in the manufactures and trades mentioned in 17 G. 3, c. 56, namely, to dyers and persons employed in the manufacture of *huts, woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk.*

By 2 & 3 V. c. 71, the police magistrates of the metropolis have power to settle all disputes between masters and bargemen, ballastmen, coal-porters, sailors, shipwrights, or other labourers for hire on the river Thames, docks, and wharfs, provided the sum in dispute does not exceed five pounds.

Police magistrates have also summary authority within the limits of the metropolis district, to compel any master, mistress, or other person, who unlawfully detains the property of another, to deliver the same up to the owner, provided the goods or property detained does not exceed *fifteen pounds* in value.

#### XIV. SERVANTS AND APPRENTICES.

For the better protection of persons who are under the care and control of others, as apprentices or servants, the 14 V. c. 11,

enacts that where the master or mistress of any person is liable to provide such person, as apprentice or servant, necessary food, clothing, and lodging; and wilfully and without lawful excuse neglect the same; or when the master or mistress maliciously and unlawfully assaults such person, whereby life or health is, or is likely to be, permanently injured; such master or mistress is guilty of a misdemeanor liable to imprisonment, with or without hard labour, for any term not exceeding three years. Costs of prosecution allowed as under 7 G. 4, c. 64, or may be ordered by the court of Queen's Bench, if indictment be removed there, to be paid by the treasurer of the county, or other liable officer.

By 5 Eliz. c. 4, churchwardens and overseers, with the consent of two justices, may bind or apprentice the children of the poor, and if any refuse to accept such poor apprentice, they shall forfeit £10.

Justices of the sessions may hear and determine disputes between masters and apprentices, and the session may quash the indentures, on default either of master or apprentice. If a parish apprentice is discharged on account of the misconduct of the master, the justices may order the master to deliver up the clothes, and to pay a sum not exceeding £10 to place him with another master, 32 G. 3, c. 57.

These powers are extended, by the 4 G. 4, c. 29, s. 2, to apprentices whose premium does not exceed £25. And, by the same act, when the magistrates direct an apprentice to be discharged, they may order the whole or a part of the premium to be refunded. Powers of magistrates to adjudicate where no premium has been paid, extended by 5 V. c. 7, s. 1.

A parish apprentice cannot be transferred to another, or dismissed, without consent of two justices, under a penalty of £10, 56 G. 3, c. 139, ss. 9, 10.

The statute of Elizabeth, which prohibited the exercise of trades, except by persons who had been apprenticed thereto seven years, is repealed; and the term of apprenticeship is now determined by the mutual convenience of the contracting parties.

Whatever an apprentice gains is for the use of his master, and whether he was legally bound or not is immaterial, if he were an apprentice *de facto*. But this can only apply to *in-door* apprentices, not to out-door apprentices, nor to those paid by a fixed rate of wages.

An apprentice leaving his master's service must serve beyond the term for the time he was absent, if it be within seven years after the expiration of the term. See HIRED SERVANTS, p. 260.

If a master give an apprentice licence to leave him he cannot afterwards recall it. And if a master discharge an apprentice

for negligence, equity will decree him to refund a proportional part of the premium.

By the custom of the city of London, a freeman may turn away his apprentice for *gaming*.

A master may correct and chastise his apprentice for neglect or misbehaviour, provided it be done with moderation; but his mistress is not entitled to the same power.

By the 4 G. 4, c. 34, s. 3, apprentices misbehaving or absconding may be punished by the abatement of the whole or part of their wages, or be committed to the house of correction for any period not exceeding three months. In case of the absence of the master or mistress, magistrate may direct the wages due to an apprentice to be paid by the steward, manager, or overseer, to any amount not exceeding £10.

By the death either of the master or apprentice, the interest, being a mere personal trust, is determined. But if the master covenant to find the apprentice, during the term, in necessaries and clothing, the death of the master will not determine the obligation, but his executors will be bound to perform it as far as they have assets.

A fiat of bankruptcy discharges an apprentice, and a part of the premium must be repaid by the assignees, proportioned to the term of the apprenticeship unexpired, 6 G. 4, c. 16, s. 49.

Indentures of apprenticeship must be enrolled in London within one year, in the Chamberlain's Office, otherwise the apprentice may sue out his discharge.

By the Mutiny Act apprentices enlisting in the army, and concealing their apprenticeship when brought before a magistrate to be attested, may be indicted for obtaining money under *false pretences*, and if after the expiration of their apprenticeship they do not surrender to a recruiting officer, they may be apprehended as deserters.

APPRENTICES TO THE SEA SERVICE.—Two justices, as also churchwardens and overseers with the approbation of such justices, may bind out boys of the age of ten years or more, who shall be chargeable, or whose parents are chargeable, to the parish, or who shall beg for alms, to be apprentices to the sea service till 21 years of age. But masters of ships are not obliged to take boys under 13, or who do not appear fitly qualified as to health and strength for the sea. Fifty shillings payable to the master on the binding, to provide clothes and bedding for apprentices, 2 & 3 A. c. 6, ss. 1-8.

Every master of a merchant ship, exceeding 80 tons burden, on clearing out from any port in Britain, is required to have on board one or more apprentices, proportioned to his registered tonnage. Master neglecting to enrol such apprentices at the custom house of the port whence the ship first clears out, is subject to a penalty of £10. Apprentices so enrolled are protected

from naval impressment till they attain 21 years of age, 4 G. 4, c. 25.

No parish settlement is acquired by an apprenticeship to the sea, nor to a householder exercising the trade of the sea as a fisherman or otherwise, 4 & 5 W. 4, c. 76, s. 67.

#### XV. PUBLIC BATHS AND WASHHOUSES.

For the health, comfort, and welfare of the inhabitants of towns and populous districts, the 9 & 10 V. c. 74, provides for the establishment of baths and washhouses, and open bathing places. The council of any incorporated borough may adopt this act, or any parish not within an incorporated borough may adopt it with the approval of a Secretary of State. In parishes not forming part of a borough, the expenses of executing the act are to be paid out of the poor's rate, and in boroughs charged on the borough fund, or a separate rate be levied for the purpose; the income arising from the baths and washhouses being applicable towards the expenses.

On the requisition in writing of ten or more ratepayers of a parish not within a borough, a vestry meeting to be convened, seven days' previous notice of the meeting having been given, to determine whether the act shall be adopted. If vestry resolve to adopt the act, a copy of resolution to be transmitted to Secretary of State; but resolution not deemed to be carried unless two-thirds of the votes given on the question, in the usual manner of voting in the vestry, shall be for the resolution. Next, the vestry shall appoint not less than three nor above seven persons, being ratepayers, commissioners for executing the act, and of whom about one-third shall go out of office yearly, but be eligible to immediate re-appointment; but any commissioner may resign on giving seven days' notice, and the vacancy be filled up by the vestry. Commissioners to meet at least once a month. Two to be a quorum if only three commissioners, and not less than one-third if a greater number. Commissioners may appoint and remove officers, and, with the approval of the vestry, fix salaries. Minutes of proceedings to be kept, to be open to the inspection of ratepayers, and auditors to be yearly appointed by the vestry. Commissioners made a body corporate with a common seal, and may sue and be sued in their corporate name. Two or more parishes may concur, with the approval of the Secretary of State, for the establishment of baths and washhouses, with a joint commission and expenditure, as agreed upon.

In boroughs, the management of the baths and washhouses is vested in the council; in parishes not within boroughs, in the commissioners. The council with approval of the Lords of the Treasury, and commissioners with the approval of the Treasury

and vestry, may borrow money for the purposes of the act. Corporate lands and parish lands, with consent of the Treasury, may be appropriated to the purposes of baths and washhouses. Council and commissioners may enter into contracts; but no contract above £100 to be entered into without notice in the newspaper, so as to be open to competition. Existing baths and washhouses may be purchased or taken on lease. Council and commissioners may make by-laws for regulating the use of the baths and washhouses, and the charges for the same; and may fix any penalty not exceeding £5 for any breach of by-laws, either by officers or others. By-laws to be approved of by Secretary of State. The number of baths for the labouring classes in any building not to be "less than twice the number of the baths of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings." Charges to be fixed not exceeding those in the schedule below, unless for the use of a washing tub or trough for more than two hours in one day. For the recovery of charges for the use of the washhouses, clothes may be detained by the officers, and if not paid within seven days, be sold. Penalty on an officer for taking fees beyond salaries, or being interested in any contract, £50. This act extends to England only. But by 9 & 10 V. c. 87, its provisions are extended to Ireland.

By 10 & 11 V. c. 61, the subjoined schedule of charges has been established:—

Baths for the Labouring Classes, supplied with clean water for every bather, or for several children bathing together, and in either case with one clean towel for every bather:

For one person above eight years old:

Cold bath, or cold shower bath, any sum not exceeding 1*d.*

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding 2*d.*

For several children, not above eight years of age, nor exceeding four bathing together:

Cold bath, or cold shower bath, not exceeding 2*d.*

Warm bath, or warm shower bath, or vapour bath, not exceeding 4*d.*

For baths of a higher class such rate of charges may be fixed as the council and commissioners think fit, not exceeding in any case *three times* the charges above mentioned for the several kinds of baths for the labouring classes.

*Washhouses for the Labouring Classes.*—Every washhouse to be supplied with conveniences for washing and drying clothes and other articles. For the use, by one person, of one washing tub or trough, or one pair of washing tubs or troughs



for one hour in one day, not exceeding 1*d.*; for two hours, not exceeding 3*d.*

Washhouses of a higher class to be charged for as the council think fit.

Open bathing places, where several persons bathe in the same water, for one person,  $\frac{1}{4}$ *d.*

#### XVI. LABOURERS' DWELLINGS.

The Labourers' Dwelling Act, 1855, the 18 & 19 V. c. 132, is for facilitating the erection of dwelling houses, with or without gardens, or garden in common for the labouring classes, by the incorporation of any number of persons, not less than six, subscribing articles of association, each specifying the amount of his subscription, so that a covenant is implied on his part, binding his heirs and executors. Dwellings erected to be subject to inspection by the general Board of Health.

#### XVII. LODGING-HOUSES FOR THE LABOURING CLASSES.

The preamble to 14 & 15 V. c. 34, states that it is "desirable for the health, comfort, and welfare of the inhabitants of towns and populous districts, to encourage the establishment therein of well-ordered lodging-houses for the labouring classes," and provides that the act may be adopted in any incorporated borough under 5 & 6 W. 4 (p. 122), or in any district of a local Board of Health, or in any place within the limits of an improvement act, or in any parish, with the approval of Secretary of State, having a population of 10,000 inhabitants, or any parish in a borough of like population.

Council of a borough may adopt the act, and expense of carrying it into execution to be charged on the borough fund, for which a rate may be levied; the income arising from the lodging-houses to be carried to the same fund, in a separate account. Local Boards of Health may adopt the act, but must give not less than 28, nor above 42, days' notice of a meeting to consider its provisions; if at the meeting one-tenth in value of the persons liable to be rated to a general district rate made by the Board request postponement, such postponement to be allowed till after next day, for election of the members of the Board (s. 7). If majority of Board be elected in other manner than by ratepayers under an improvement rate, act not to be adopted without consent of such ratepayers. Expenses of carrying act into execution by Improvement Commissioners to be charged on the improvement rates.

By s. 14, on the requisition in writing of ten or more ratepayers of a parish, the churchwardens to convene a meeting of the vestry to determine whether the act shall be adopted; notice of meeting in three successive weeks to be given; if vestry

resolve to adopt act, resolution to be sent to Secretary of State; but resolution not to be deemed carried unless two-thirds in value vote for it; when adopted, three or not more than seven commissioners to be appointed by the vestry to carry act into execution; one-third, as near as possible, of the commissioners to retire annually, but eligible to immediate re-election. Vacancies to be filled up by the vestry. Overseers to levy as part of the poor-rate the needful sums for expenses. Vestries of two or more parishes may agree to adopt the act, with approval of Home Office. Commission to be a body corporate and their acts valid, despite of informalities (s. 30). Borough councils may borrow money for the act with approval of Treasury. Parish lands, in certain cases, may be appropriated for the purposes of the act (s. 35), or contracts made for the purchase of them. Councils and commissioners to erect lodging-houses or purchase existing ones. Councils and commissioners not personally liable; the latter cease to be a corporation on the cessation of their duties. By-laws for regulation of lodging-houses to be made with approval of Home Secretary, and hung up in every room. Lodging-houses to be open to inspection by local Boards of Health. Clerks or other officers accepting fees, or being concerned in contracts, liable to a penalty of £50. This act does not extend to Scotland.

#### XVIII. COMMON LODGING-HOUSES.

A common lodging is any house, not being a licensed victualler's, let wholly or in part at a daily or weekly rent not exceeding 3s. 6d. per week; or in which persons are lodged, for hire, for a single night, or for less than a week at one time; or in which any room let for hire is occupied by more than one family.

Common lodgings were regulated by an act of 1851, the 14 & 15 V. c. 38, but it provides, that if only part of a house be so used, such part only shall be considered a common lodging-house. The act does not extend to Scotland, or the city of London. Its execution within the Metropolitan Police District is vested in the Police Commissioners of the Metropolis; in the country, in municipal corporations, or local boards of health, or, where none such, in justices of peace, acting in petty sessions.

Expenses of executing the act in the metropolis to form part of the general expenses of the police acts; in the country to be charged under the expenses of the local boards of health, or the borough fund, or improvement act, or if executed by justices to form part of the general expenses of the constabulary of the place.

By s. 6, notice is to be given to the keepers of Common

Lodging-houses by the local authority administering the act, that unless their houses be registered, they will be liable to a penalty of £5 for every lodger taken pending non-registration. Register to be kept by local authority, specifying situation of house, and number of lodgers allowable to be kept. Houses to be inspected, and lodgers not taken till one month after notice given. Regulations may be made by local authority within the limits of the Board of Health Act, and fines levied for neglect of them. If fever, or any contagious or infectious disease, be in a house, notice must be given by keeper to some officer of local authority, and also to the poor-law medical officer, and relieving officer of the union or parish. Keeper of lodging-house thoroughly to cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, cesspools, and drains, to the satisfaction, and conformable to the regulations of local authority, and linewash the walls and ceilings in the first week of the months of October and April in every year, s. 13. Penalty on keeper for neglect of regulations, or for not giving notice if any person be confined to his bed by fever, or infectious or contagious disease, 40s. for every day the offence continues; penalty irrespective of other penalties, in other acts for like offences.

The provisions of the above act have been extended by 16 & 17 V. c. 41. All common lodging-houses are to be registered before being used, and to be kept only by registered keepers. Local authority may refuse to register houses, if keeper do not produce certificate of character signed by three inhabitant householders within the parish, each rated to the value of six pounds or upwards. Local authority empowered to require an additional supply of water to common lodging-houses. By s. 7, provisions are made pertaining to removal of sick lodgers to hospitals, &c. Reports may be ordered from keepers of houses. Town councillors, &c., required to remove causes of complaint certified under "Nuisances Removal Act," &c. Keepers of common lodging-houses, for a third offence, may be disqualified for keeping the same for five years.

CITY OF LONDON.—By the Sewers Act, 14 & 15 V. c. 75, no cellar in any court is to be occupied as a dwelling; every person who shall let, or knowingly suffer to be occupied for hire or rent, as a dwelling, any vault, cellar, or underground room, to forfeit £2, and also a sum not above 10s. for every day during which it shall be so occupied. Passing the night there sufficient proof of occupation.

## CHAPTER XXV.

*Hawkers and Pedlers.*

**HAWKERS** are itinerant traders, who proclaim their wares through the street, or from town to town. A *pedler* is a hawker who deals in trifling or inferior commodities. Either from a regard to the revenue laws, or from a desire to encourage the more open and regular pursuits of the settled trader, the Legislature has shown considerable jealousy of hawkers and pedlers, and placed their avocations under strict penal regulation.

By the 50 G. 3, c. 41, hawkers and pedlers are to pay an annual licence duty of £4; and if they travel with a horse, ass, or other beast, bearing or drawing burthen, they are subject to an additional duty of £4 for each beast so employed. Unless householders or residents in the place, they are not allowed to sell *by auction*, whereby the highest bidder is deemed the purchaser; penalty £50, half to the informer, half to the queen. But nothing in the act extends to hinder *any* person from selling, or exposing for sale, any sort of goods in any public market or fair.

Every hawker, before he is licensed, must produce a certificate of good character and reputation, signed by the clergyman and two reputable inhabitants of the place where he usually resides. He must have inscribed, in Roman capitals, on the most conspicuous part of every pack, box, trunk, case, cart, or other vehicle, in which he shall carry his wares, and on every room and shop in which he shall trade, and likewise on every hand-bill which he shall distribute, the words, "Licensed Hawker." Penalty, in default, £10. Unlicensed persons wrongfully using this designation forfeit £10.

Hawkers dealing in smuggled goods, or in goods fraudulently or dishonestly procured, are punishable by forfeiture of licence, and incapacity to obtain one in future.

Hawkers trading without licence are liable to a penalty of £10. So, also, if they refuse to show their licence, on the demand of any person to whom they offer goods for sale, or on the demand of any justice, mayor, constable, or other peace-officer, or any officer of the customs or excise. By 5 G. 4, c. 83, hawkers, trading without a licence, are punishable as vagrants.

To forge or counterfeit a hawker's licence incurs a penalty of £300. To *lend* or hire a hawker's licence subjects lender and borrower to a penalty of £40 each, and the licence becomes forfeited. But the servant of a licensed hawker may travel with the licence of his master, provided he usually reside in the house of his employer as a member of his family, 10 B. & C. 66.

Hawkers trading without a licence are liable to be seized and

detained by any person, who may give notice to a constable, in order to their being carried before a justice of the peace. Constables refusing to assist in the execution of the act are liable to a penalty of £10.

Nothing in the act extends to prohibit persons from selling fish, fruit, or victuals; nor to hinder the maker of any home manufacture from exposing his goods to sale in any market or fair, and in every city, borough, town corporate, and market town; nor any tinker, cooper, glazier, plumber, harness-mender, or other person, from going about, and carrying the materials necessary to his business.

A single act of selling, as a parcel of handkerchiefs to a particular person, is not sufficient to constitute a hawker, within the meaning of the statute, *Rex v. Little, Bur.* 613.

By the 52 G. 3, c. 108, no person being a trader in any goods, wares, or manufactures of Great Britain, and selling the same by *wholesale*, shall be deemed a hawker; and all such persons or their agents, selling by *wholesale* only, may go from house to house, to any of their customers who sell again by wholesale or retail, without being subject to any of the penalties contained in any act touching hawkers, pedlers, and petty chapmen.

Hawkers exposing their goods to sale in a market town must do it in the market-place, 4 *T. R.* 273.

Persons hawking tea without a licence are liable to a penalty, under 50 G. 3; and, even *with a licence*, they would be liable to a penalty for selling tea in an unentered place, 2 *B. & C.* 142.

## CHAPTER XXVI.

### *Army, Militia, and Navy.*

#### 1. ARMY.

THE crown, with regard to military offences, has considerable legislative power; for the sovereign, by the Annual Mutiny Act, may form articles of war and constitute courts-martial, with power to try crimes by such articles, and inflict penalties by judgment of the same, not inconsistent with the provisions of the Mutiny Act, nor extending to transportation, or to *life or limb*, except for crimes expressly declared to be so punishable by the act.

The Mutiny Act comprises a series of regulations which are annually enacted by the Imperial Parliament for the government of the military forces of Great Britain and Ireland. It was first passed in 1689, from which period it has varied in many of its provisions, but has been uniform in all its principal

points; such as the dependence of a standing army on the consent of parliament, and the subjection of military men generally to the responsibilities and processes of the ordinary law.

By the Mutiny Act, it is provided that every officer or private who shall excite or join any mutiny, or knowing of it shall not give notice to the commanding officer, or shall desert, or enlist in any other regiment, or sleep upon his post, or leave it before he is relieved, or hold correspondence with a rebel or enemy, or strike or use violence to his superior officer, or disobey his lawful commands; the offender shall suffer death, or such other punishment as the court-martial may inflict.

The Mutiny Act, as already stated, does not exempt the military from being proceeded against by the ordinary course of criminal justice; and any officer or private guilty of any crime must be delivered over to the civil power; a commanding-officer refusing or neglecting would be cashiered.

General courts-martial have power to inflict corporal punishment for immoralities, misbehaviour, or neglect of duty, and may sentence to imprisonment in any house of correction.

District or garrison courts-martial may punish a soldier for *maiming* or *injuring* himself, or other soldier, with intent to avoid the service; or for feigning disease or violating the rules of the hospital while under medical care.

A regimental court-martial may sentence to imprisonment, with or without hard labour, for any period under 30 days, and to solitary confinement under 20 days.

The churchwardens of every parish, in England and Ireland, and the constable in Scotland of every parish, on receiving a notification from the Secretary at War of any soldier of the parish having received the royal approbation, or of any soldier having disgraced himself by misconduct, shall affix on the door of the church or chapel on the following Sunday such notification.

A person receiving enlistment money from an officer or soldier attested and on the recruiting service, is declared duly enlisted; but, on application to a magistrate within four days after, and the payment of 20s. with expenses, he may be again discharged. Persons enlisting and wilfully concealing any infirmity are punishable as incorrigible rogues.

In 1852 a person upon whom a soldier had been billeted, instead of accommodating the soldier in his own house, offered to provide him with quarters elsewhere, but the soldier refused to avail himself of it, and brought an action for billet-money. The justices were unable to come to a decision, and they agreed to refer the case to the Secretary-at-War. In the answer received from the War Office, the magistrates were informed that the householder upon whom the soldier had been billeted was not bound to receive the soldier into his own house; and that,

having offered to provide quarters for him elsewhere, the householder had satisfied the obligation imposed upon him by law. See *BILLETING*, p. 206.

**EXEMPTIONS OF THE MILITARY FROM CIVIL LIABILITIES.**—A person who enlists into the regular army contracts to serve either at home or abroad in his military capacity, and at any time his services may be required. To enable him more effectually to fulfil these engagements, and prevent his being withdrawn from his duties, the law has conceded to him certain privileges, not enjoyed by the rest of the community. For instance, he is not bound by any contract by parol or in writing, or punishable for leaving any work or employer; nor is he liable to be arrested or summoned for any debt under £30, nor to be prosecuted for offences by the civil power, except on charges of felony or misdemeanor. These exemptions have been continued by the Mutiny Act of 1852, and by s. 52 it is provided that no soldier shall be proceeded against for “not maintaining his family, or for having deserted any wife, child or children, legitimate or illegitimate, or other relation,” &c. Lately a soldier in the Life Guards was summoned before the Marlborough Street magistrate, for refusing to support an illegitimate child. Mr. Hardwick took time to consider, and then pronounced his decision, that the Mutiny Act had deprived him of jurisdiction, and that he could render no assistance. The young woman asked if she had no remedy in law? Mr. Hardwick said he knew of none.

The Mutiny Act is applicable to all persons employed in the recruiting service; to the forces of the East India Company while in any part of the United Kingdom, and till their arrival in the territories of the company; to the officers and men employed in the service of the artillery or engineers, in the corps of sappers and miners; to the military surveyors and draughtsmen in the ordnance department; and to foreign troops serving in any part of the British dominions. It is also applicable to the Marine Forces while on shore, and to officers holding rank by brevet, but not to such as are on half-pay. It does not extend to the militia forces, or yeomanry, or volunteer corps in Britain or Ireland. See *Prize Money*, in the *DICTIONARY*.

A soldier is invested with all the rights of other citizens, and is bound to all the duties of other citizens; and he is as much bound to prevent a breach of the peace or a felony as other citizens, *Burdett v. Abbott*. See *Martial Law*, in the *DICTIONARY*.

By the 37 G. 3, c. 40, amended by 1 V. c. 91, to attempt to seduce any person serving in the army or navy from his allegiance, or to incite any one to commit any act of mutiny, is punishable with transportation for life or seven years, or imprisonment for three years. And whoever shall administer any unlawful oath, or shall take any oath or engagement intended to

bind them in any mutinous or seditious society, or to obey any committee, or any person not having legal authority, is guilty of felony, and may be transported for seven years.

Soldiers may make *verbal* wills, and dispose of their wages and personal chattels without the forms and expenses which the law requires in other cases.

Neither the full nor future half-pay of a military or naval officer is assignable, *Lidderdale v. Duke of Montrose*, 4 T. R. 248. But, in case of insolvency, a portion of such pay may be sequestrated under the order of the court, with the consent of the Secretary-at-War, or of the Lords of the Admiralty, 7 G. 4, c. 57, s. 29.

**PERIODS OF ENLISTMENT.**—By 10 & 11 V. c. 37, no person can be enlisted as a soldier for a longer term than ten years in the infantry or twelve years in the cavalry, artillery, or other ordnance service, such term to be reckoned from the day of enlistment; or, if such person be under eighteen years of age, from the day on which he attained such age. Soldiers during the last six months, or at the end of their term of service, may re-enlist for a further term of eleven years, or for twelve years in the cavalry or artillery; but, if ordered on foreign service, any soldier who is within three years of the expiration of his term, may re-enlist for such period as may complete twenty-one years in the infantry, or twenty-four years in the cavalry or artillery. If, while on foreign service, his term shall expire, his term may be prolonged by the commanding officer of the station for the further term of two years, and if any soldier, after the completion of his second term of service, shall give notice to his officer of his willingness to continue, he shall be allowed to do so until he give three months' notice of his desire to be discharged; but if at the expiration of such term he be unwilling to re-enlist, he shall be conveyed home with all convenient despatch, unless he desire to remain in the colony. If the term of his service shall expire after the committal of any offence, he is to be considered as in the service till after the trial and during the punishment, if any, for the same, but for no other purpose. Periods of imprisonment for offence or debt, or during desertion, not to be reckoned as part of the time of limited enlistment.

By 10 & 11 V. c. 63, the term of enlistment for the Royal Marine Forces is limited to twelve years, with the same limitations and conditions as the preceding act relating to the army service.

**DUELLING IN THE ARMY.**—The practice of duelling having ceased to be in accordance with the reason and humanity of the age, endeavours have been made by the Commander of the Forces to check the resort to arms for the settlement of quarrels. In 1844 the following three new Articles of War were issued, with a view to the abatement of duelling in the army.



1. Every officer who shall give or send a challenge, or who shall accept a challenge to fight a duel with another officer, or who, being privy to an intention to fight a duel, shall not take active measures to prevent such duel, or who shall upbraid another for refusing or for not giving a challenge, or who shall reject or advise the rejection of a reasonable proposition made for the honourable adjustment of a difference, shall be liable, if convicted before a general court-martial, to be cashiered, or suffer such other punishment as the court may award.

2. In the event of an officer being brought to a court-martial for having acted as second in a duel, if it appear that such officer exerted himself strenuously to effect an honourable adjustment of the difference, but failed through the unwillingness of the adverse parties, then such officer is to suffer such punishment as the court shall award.

3. Approbation is expressed of the conduct of those who, having had the misfortune to give offence to, or injure or insult others, shall frankly explain, apologise, or offer redress for the same, or who, having received offence, shall cordially accept frank explanation or apologies for the same; or, if such apologies are refused to be made or accepted, shall submit the matter to the commanding officer: and, lastly, all officers and soldiers are acquitted of disgrace or disadvantage who, being willing to make or accept such redress, refuse to accept challenges, as they will only have acted as is suitable to the character of honourable men, and have done their duty as good soldiers who subject themselves to discipline.

## II. MILITIA.

The Militia consists of that description of military force who are chosen by ballot, or by the act of 1852 by voluntary enlistment, to serve a certain number of years within the limits of the realm. While placed on general military duty there is scarcely any difference in the laws to which they are answerable from soldiers of the line; but, while they are merely called out for annual training, they are subject to no punishment which affects life or limb.

By 15 & 16 V. c. 50, the acts relative to the militia in England are consolidated and amended, and a militia force of 80,000 men may be raised, 50,000 in 1852, and 30,000 in 1853, to be increased, in case of invasion or imminent danger of invasion, to 120,000. The act first provides for voluntary enlistment to serve for five years, and to encourage it authorizes a bounty not exceeding 6*l.* to be paid to each person enlisting, and the bounty may be paid either at once or by instalments of 2*s.* 6*d.* a month. Period of training and exercise not to exceed twenty-one days in one year: such twenty-one days may be at once, or several times. But by order in

council, training may be discontinued in England and Wales, and the time of training extended to fifty-six days, or reduced to not less than three days. The quotas for each county to be fixed by order in council, and where the number of men fixed for any county, riding, or place, has not been enrolled by voluntary enlistment, her majesty in council may order them to be raised by ballot, from which the subdivisions and parishes in which the full number of volunteers has been raised are to be exempt, and persons above thirty-five years of age are not liable to the ballot. Members of the senate, examiners, professors, tutors, lecturers of the University of London; or of any college, school, or institution; or students, duly matriculated and actually receiving education, and resident members of the University of Durham, or of the colleges of St. David, Lampeter, or St. Bees, are also exempt. Lists of persons liable to be balloted for, with a statement of the place and time of appeal, are to be affixed to every church and chapel door of the parish or place for which the ballot is to be made. Her majesty may direct into what regiments the militia shall be formed, and with what officers and staff, and may extend or reduce the period of training and exercise to not more than fifty-six or less than three days in a year. The act also contains provisions with regard to the qualifications of officers, and the regulations as to age, height, and bounty-money, which may be issued by a Secretary of State, such regulations to be laid before parliament, if, as already stated, sitting, within twenty-one days after the making thereof. Militia of the City of London to continue to be raised as heretofore, under the 1 G. 4; the act does not extend to Scotland, nor to yeomanry and volunteer corps in Great Britain.

Under former acts, the militia could only be drawn out and embodied in case of invasion, or imminent danger thereof, or in case of rebellion or insurrection; but by 17 & 18 V. c. 13, the militia, in whole or part, may be drawn out and embodied whenever the country is in a state of war with any foreign power. By s. 2, the time of training may be extended after a corps has been called out. The time spent in drill previously to the assembling of a corps for training and exercise not to be reckoned any part of the fifty-six days for training and exercise. Notice of the time and place of meeting to be sent by the commanding officer, by post, to the residence of the men, as stated in their attestations, and to be deemed sufficient.

By 17 & 18 V. c. 105, s. 31, the landed estate to qualify officers of the militia may be in any part of the United Kingdom. Inn-keepers and others are made liable to have the permanent staff of the militia when disembodied billeted upon them, and required to find lodging, with fire and candle, as under the Mutiny Act. A militia volunteer, fraudulently re-enlisting as

a militiaman, enrolls or offers to enrol himself before the expiration of his service in any regiment or corps, subject to a penalty of £10, or imprisonment with hard labour for three months. Payment of bounty may be withheld from men for misconduct, or absenting themselves without leave from training. Buying or receiving in exchange the arms, clothes, or other regimental necessaries of a militiaman, liable to a penalty of £10, or imprisonment with hard labour for six months. Militia volunteers, while under instruction in the army, subject to the Mutiny Act.

### III. ROYAL NAVY.

The system of government and discipline established in the Navy is directed by certain express rules and articles, enacted by the authority of Parliament; in these articles almost every possible offence is enumerated, and the punishment annexed, by which means seamen have an advantage over soldiers, whose articles are framed at the pleasure of the crown. The acts referred to are the 22 G. 2, c. 33, and the 19 G. 3, c. 17, which, among other articles, comprise the following:—

Officers shall cause the sabbath day to be duly observed, according to the liturgy of the Church of England. Persons guilty of swearing, drunkenness, or uncleanness, are punishable as a court-martial shall direct. Holding intelligence with an enemy, or receiving any letter or message from an enemy, and not within twelve hours communicating the same to the superior officer, is punishable with death. Nor shall any relieve an enemy with money, victuals, or ammunition, on pain of punishment. No person on board a prize shall be stripped of his clothes, pillaged, beaten, or ill-treated, upon pain of such punishment as a court-martial shall impose. Every commander who, upon signal to fight, or in sight of any ship which it may be his duty to engage, or who, upon likelihood of engagement, shall not make the necessary preparation for fight, and encourage the inferior officers and men to fight, shall suffer death, or such punishment as a court-martial shall deem him to deserve. And if any person shall treacherously or cowardly yield or cry for quarter, he shall suffer death. Desertion is a capital offence, and any commander receiving a deserter, knowing him to be such, may be cashiered. Officers behaving in a scandalous, oppressive, or fraudulent manner, to be dismissed. All other crimes not capital to be punished according to the laws and customs at sea; but no person to be imprisoned for longer than two years.

Commanders-in-chief are empowered to call courts-martial, consisting of commanders and captains. If five or more ships meet on a foreign station, the senior officer may hold courts-martial and preside. No court-martial to consist of more than

thirteen, nor less than five members. And, after trial begun, no member to go on shore until sentence, except in case of sickness, upon pain of being cashiered. The judge-advocate and all officers constituting a court to be upon oath.

The power given by the statutes remains in force with respect to ships wrecked, lost, or destroyed, until they be discharged, or the crew removed to another ship, or till a court-martial has been held to investigate the loss of the vessel. If, upon inquiry, it appear every one did his duty, their pay goes on; as, also, the pay of officers and seamen taken by the enemy, having done their best to repel the enemy, and behaved obediently.

By 16 & 17 V. c. 69, s. 11, the compulsory service of seamen may extend to ten years, or any other term of continuous service authorized by the regulation. By s. 12, *spirituous or fermented liquors* not to be brought on board any queen's ship without the consent of the commanding officer; such spirits or liquors subject to forfeiture; and if any person shall approach or hover about a ship, without previous consent, for the purpose of conveying liquors or spirits on board, or shall aid or advise any officer, seaman, or marine to desert or be absent, subjects to a penalty of £10. By s. 18, railway companies are required to convey naval forces upon the same terms as military and police.

By the 19 & 20 V. c. 83, for the better defence of the realm, and more ready manning of the navy, the Coast-Guard Service is placed under the authority of the Admiralty. By s. 7, officers and men employed in the coast guard, and borne on the books of any ship belonging to the royal fleet, are to have the same privileges in respect of making allotments of wages and remittances, and of pensions, as persons serving in the fleet. Officers of the coast guard may, as naval officers, instruct and train the royal naval coast volunteers.

#### IV. DISCIPLINE AND WAGES OF THE MERCANTILE MARINE.

The Merchant Shipping Act of 1854, the 17 & 18 V. c. 104, amends and consolidates the entire statute law relative to merchant shipping, divided into eleven parts, comprising in the whole 548 clauses. The first part relates to the Board of Trade and its general functions. Part 2, to British ships, their ownership, measurement, and registry; and part 3, to masters and seamen: part 4, to safety and prevention of accidents; part 5, to pilotage; part 6, to lighthouses; part 7, to mercantile marine fund; part 8, to wrecks, casualties, and salvage; part 9, to the liabilities of ship-owners; part 10, to legal procedure; and part 11, to miscellaneous matters. It is only the third part, relative to Masters and Seamen, which it will be necessary to include in the present section.

Any master of or any seaman or apprentice belonging to any British ship, who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanor, s. 239.

The Board of Trade may grant to such persons as it thinks fit licences to engage or supply scamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms, and to be revocable upon such conditions, as such Board thinks proper. Penalty for acting without a licence, unless it be the owner, master, or mate, not exceeding £20, s. 146.

With respect to the *legal rights* of seamen it is provided that a seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative.

No right of wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores, shall bar his claim.

In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage, such seaman shall be entitled to wages for the time of service prior to such termination.

No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

The master or owner of every ship shall pay to every seaman his wages within the respective periods following; (that is to say,) in the case of a home-trade ship within two days after the termination of the agreement, or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages.

Any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in *Scotland* either before any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice, not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final, ss. 181-187.

Whenever, during the absence of any seaman on a voyage, his wife, children, and step-children, or any of them, become or becomes chargeable to any union or parish in the United Kingdom, such union or parish shall be entitled to be reimbursed, out of the wages of such seamen earned during such voyage, any sums properly expended during his absence in the maintenance of his said relations or any of them, so that such sums do not exceed a specified proportion of his wages, s. 192.

Any seaman may leave his ship for the purpose of forthwith entering into the naval service of her majesty, and such leaving

his ship shall not be deemed a desertion therefrom, and shall not render him liable to any punishment or forfeiture whatever; and all stipulations introduced into any agreement whereby any seaman is declared to incur any forfeiture or be exposed to any loss in case he enters into her majesty's naval service shall be void, and every master or owner who causes any such stipulation to be so introduced shall incur a penalty not exceeding £20, s. 214.

## CHAPTER XXVII.

### *Protestant Dissenters and Roman Catholics.*

Few traces remain in the statute book of the disqualifying penal code, which, to a late period, interdicted to a large portion of the community not only the enjoyment of their civil immunities, but the free disposal of their persons and property. No class of religionists is now exclusively subject to any test or disability on account of dissent from the doctrine or discipline of the established church, and the honours and advantages of the social state are open to every candidate, whatever modification of Christian belief he may profess. In the acts about to be noticed it will be remarked, that the few offices to which Roman Catholics continue ineligible, and the formal requirements to which they continue subjected, are chiefly those connected with the assumption of the title or denomination of the established hierarchy, or to the disposal of academical, collegiate, or ecclesiastical patronage, the functions of which could not be properly discharged by those not members of the national church.

#### I. PROTESTANT DISSENTERS.

The Corporation and Test Acts operated to exclude Protestant Dissenters from offices in corporations, and from civil and military employments. By the former, no person could be legally elected to any office in any city or corporation, unless, within a twelvemonth preceding, he had received the sacrament of the Lord's Supper, according to the rites of the Church of England. The *Test Act* required every civil and military officer to make the declaration against transubstantiation, and receive the sacrament according to the forms of the established church. The obnoxious parts of these statutes are repealed, and the 9 G. 4, c. 17, provides that, in lieu of the sacramental test, every person elected to any office of magistracy, place, trust, or employment, relating to the government of any city, corporation, or borough in England, shall, within one calendar month next before or upon his admission, make and subscribe the following declaration:—

"I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, upon the true faith of a Christian, that I will never exercise any power, authority, or influence, which I may possess by virtue of the office of *to injure or weaken the Protestant Church as it is by law established in England*, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church, or the said bishops and clergy, are or may be by law entitled."

This declaration to be made before such persons as by the charter or usages of the corporation ought to administer the oath for the due execution of the office, or, in default of these, before two justices. Omitting the declaration vacates the office. Officers under the crown, formerly required to qualify by taking the Lord's Supper, to make the declaration within six calendar months, either in the Court of Chancery, the Queen's Bench, or at the quarter sessions of the county or place where the party resides. But no naval officer below the rank of rear-admiral, no military officer below the rank of major-general in the army or colonel in the militia, no commissioner of customs, excise, stamps, or taxes, or person under the said commissioner, or under the postmaster-general, is required to make or subscribe the declaration, in respect of such commission, office, or appointment. Naval or military officers receiving any appointment while abroad, or within three months previous to leaving England, may make the declaration any time within six months after their return.

In the Catholic Relief Act, the 10 Geo. 4, c. 7, is a clause affecting Protestant Dissenters, in common with others not frequenting the established places of religious worship, namely, the 25th section, in which it is enacted that *no person* holding a judicial, civil, or corporate office, shall be allowed to attend in his *official costume*, or with the *insignia of his office*, at any place for religious worship, other than that of the United Church of England and Ireland; or in Scotland, other than the Presbyterian Established Church of Scotland, under pain of forfeiture of the office, and a penalty of £100 for every offence.

The provision of 52 G. 3, c. 155, by which Protestant Dissenters are required to register their place of worship in the diocesan courts, or have it recorded at the quarter sessions, is abolished by 15 & 16 V. c. 36, and instead, registration at the office of the superintendent registrar of births, marriages, and deaths, is sufficient. Fee for certificate of registration not to exceed 2s. 6d. List of certified places to be printed and open to inspection without fee.

The 52 G. 3, c. 155, which required the places of religious worship of Protestants to be certified, if more than twenty persons assembled, under a penalty of £20, or not less than 20s. for



each meeting, is so far repealed by 18 & 19 V. c. 86, that no prosecution is maintainable against any religious assemblage at which the incumbent or curate of the parish presides; or if the congregation assemble in a private house, or on the premises pertaining thereto; or if the congregation assemble in any building not usually appropriated to religious worship. Act made protective of Roman Catholics and Jews, same as Protestant Dissenters. By 18 & 19 V. c. 81, all places of religious worship, not being churches or chapels of the established church, may, if the congregation should desire it, be certified to the Registrar-General.

Other provisions appear to remain unrepealed, and by 52 G. 3, c. 155, any one preaching or teaching at such place, shall, when required by a magistrate, take the oaths and make the declarations specified in the 19 G. 3, professing themselves to be Christians and Protestants, and that they believe the Scriptures to contain the revealed will of God, and to be the rule of doctrine and practice. Preachers or teachers not required to take the oath, may call upon any magistrate to administer such oath to them, and to give them a certificate thereof, which will exempt them from serving in the militia, and from parish and ward offices, supposing they employ themselves in the duties of a teacher or preacher, and do not follow any trade or occupation but that of a schoolmaster.

By 52 G. 3, no congregation to meet with the door locked or otherwise fastened, under a penalty of £20, or not less than 40s.

By s. 12, persons wilfully *disturbing or molesting* the minister, or any individuals assembled for religious worship in the manner authorized by the act, shall, on conviction at the next quarter sessions, pay the penalty of £40.

## II. ROMAN CATHOLICS.

The civil disabilities of the Catholics were removed by the 10 G. 4, c. 7, which qualifies them to sit in parliament, to vote at the election of members, and generally to enjoy all franchises and offices, without religious test or declaration, further than by taking and subscribing the following oath:—

“I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, and will defend her to the utmost of my power against all conspiracies and attempts whatever, which shall be made against her person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to Her Majesty, her heirs, and successors, all treasons and traitorous conspiracies which may be formed against her or them: and I do faithfully promise to maintain, support, and defend to the utmost of my power, the succession of the crown; which succession, by an act intitled

*An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body, being Protestants: hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of this realm: And I do further declare, that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated or deprived by the Pope, or any other authority of the see of Rome, may be deposed or murdered by their subjects, or by any person whatsoever: And I do declare that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. I do swear, that I will defend to the utmost of my power the settlement of property within this realm, as established by the laws: And I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this realm: And I do solemnly swear, that I never will exercise any privilege to which I am or may become entitled, to *disturb or weaken the Protestant religion or Protestant government in the United Kingdom*: And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever. So help me God."

Catholics to take the oath within one calendar month next before, or upon admission to any corporate office; and within three calendar months next before appointment to any office under the crown. Penalty for omission, £200, and forfeiture of the office. Naval and military officers to take the above oath.

By an act of 1851, the 14 & 15 V. c. 60, which gave rise to much ephemeral heat and discussion, Roman Catholic bishops and deans are prohibited, under a penalty of £100, from assuming ecclesiastical titles in respect of places in the United Kingdom.

A Catholic priest is not eligible to sit in the House of Commons, and proof of the celebration of any religious service according to the rites of the Church of Rome, is evidence of such person being in holy orders within the meaning of the act. Nor can a Roman Catholic act as schoolmaster without a licence from the archbishop or bishop; nor as proctor in the ecclesiastical courts.

Catholics are not eligible to hold the offices of guardians and justices, or of regent of the United Kingdom: and nothing in the act enables any person, further than before enabled, to hold the offices of Lord Chancellor, Keeper or Commissioner of the Great Seal, or the office of Lord Lieutenant, Deputy, or Go-

vernor of Ireland, or her majesty's High Commissioner to the general assembly of the Church of Scotland. They may be members of *lay corporations*, and vote in any *corporate election*, or other proceeding on taking the oath; but they are not to join in the election, presentation, or appointment to any ecclesiastical benefice, or to any office connected with the established churches of England, Ireland, and Scotland.

The act does not enable any persons, further than they were previously enabled, to hold any office in the *established churches, or ecclesiastical courts, universities, colleges of Eton, Westminster, and Winchester, or any college or school within the realm*; nor repeal any ordinance of such foundations excluding Roman Catholics; nor give the right of presentation to ecclesiastical benefices.

Where any right of presentation to any ecclesiastical benefice belongs to any office in the gift of the queen, and such office is held by a person professing the Roman Catholic religion, the right of presentation is exercised by the archbishop of Canterbury.

No Catholic can advise the crown in the appointment to any office or preferment in the established church, under pain of being guilty of a high misdemeanor, and disability to hold office in future.

Titles to sees and deaneries in England and Ireland not to be assumed by Roman Catholics, under a penalty of £100.

*No person* holding any judicial, civil, or corporate office, to attend in his *official costume*, nor with the *insignia* of his office, at any place of worship, other than the established church, under a penalty of £100, and forfeiture of office.

Roman Catholic ecclesiastics not to exercise any of the rites or ceremonies of their religion, or *wear the habits* of their order, except in their usual places of worship, or in private houses, under pain of forfeiting £50 for every offence.

Jesuits, and members of other *religious societies* of the Church of Rome, resident within the United Kingdom, to be certified to the clerk of the peace within six months after the commencement of the act, under penalty of £50 for every calendar month. Jesuits, &c., coming into the realm, to be banished from the kingdom for life. But natural-born subjects, being Jesuits at the commencement of the act, may return into the kingdom, and be registered. The principal Secretaries of State may grant licences to Jesuits, &c., to come into the kingdom, and may revoke the same. Accounts of such licences to be annually laid before parliament. Admitting persons to be members of such religious order, a misdemeanor; and persons so admitted may be banished for life; and, not leaving the kingdom, may be conveyed out of it to such place as her majesty shall appoint; and if at large after three months, may be transported. Nothing

in these clauses extends to any order or establishment, consisting of *females* bound by religious or monastic vows.

By the 7 & 8 V. c. 102, a mass of obsolete statutes, containing penal enactments against the Roman Catholics are repealed.

### III. RELIEF IN RELIGIOUS OPINIONS.

In the session of 1846 an act was passed, the 9 & 10 V. c. 59, to relieve certain classes of believers from penalties and liabilities in regard to *religious opinions*. It is not very easy to give an analysis of this important act, as it relates to and rejects a number of statutes, or parts of statutes, extending from the 54 & 55 H. 3, to the time of G. 3, without recapitulating all these previous acts. Perhaps it may be sufficient to state that most of these old acts had become obsolete, that the repeal affects chiefly the Jews and Roman Catholics, and that the most important parts of the new act are those that enable Jews to hold landed property and to endow schools and other charitable foundations; that repeal the laws obliging them to provide for their Protestant children, and forbidding them to alienate property without leave of the king; and that prescribing them to wear a badge of yellow taffeta. So much of the act of Edw. 6, c. 1, is also repealed, intituled "An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm," which requires persons to *attend their parish church* or chapel on Sundays and holydays, provided they usually attend some other place of worship; but in no case is any pecuniary penalty to attach, so that the church censure is the only punishment remaining. Also the Uniformity Act of Charles 2 is repealed, which forbade any man to teach in schools without a licence from the bishop; and also that part of 18 G. 3, c. 60, which declares "that no schoolmaster professing the Roman Catholic religion shall receive into his school for education the child of any Protestant father;" and that no Roman Catholic shall keep a school without a licence from the quarter sessions. This will be perhaps enough to show the general nature of the measure, though it is curious to trace the mass of absurd enactments which this act has cleared away. The act is, however, not to affect impending suits, and the last clause continues the punishments already mentioned (p. 282) against all persons disturbing congregations assembled for religious purposes.

## PART IV.

## PROPERTY AND ITS INCIDENTS.

HAVING, in the last part, stated the various laws which affect persons in public offices, in their professions, trades, and occupations, and in their individual and religious relations to each other, we come next to those which affect their possessions. But, before entering on the incidents connected with the possession and conveyance of property, it may be convenient to explain the meaning of a few terms, the legal sense of which differs in some degree from that usually intended in common conversation : and also to premise a few explanatory observations on the nature of tenures, and the different modes of acquiring property.

## I. EXPLANATIONS.

Property may be defined, anything possessing exchangeable value, and is either *real* or *personal*.

*Real* property consists of lands, tenements, and of such things as are permanent, fixed, and immovable ; and the interest in which continues during the life of the owner, or the life of another person or persons.

*Personal* property, or personalty, consists of leases, money, goods, and other movables, which either are or easily may become transferable.

*Chattels* include all property, movable or immovable, which is not freehold, copyhold, or inheritable. They are either real or personal ; real chattels or chattel interests, are interests or minor estates, carved out of greater, as leases or terms of years ; personal chattels are all property not connected with the freehold.

*Estate*, in ordinary discourse, is applied only to land ; but, in law, obtains the same signification as property, and may be either *real* or *personal*.

*Hereditament* comprehends all inheritable property, including not only land and tenements, but whatever may be entrusted or conveyed to another ; as rents, advowsons, common right of way, annuities, offices, &c.

*Manors* are as ancient as the Saxon constitution, and imply a territorial district, with the jurisdiction, rights, and perquisites belonging to it, and on part of which the lord resided, and cultivated as his demesne land for the use of his household : the rest being distributed among his tenants in fee, for life, years, or at will, according to the custom of the manor. They were formerly

called *baronies*, as they still are *lordships*; and each lord was empowered to hold a court, called the court-baron, for redressing misdemeanors and settling disputes among the tenants.

*Franchise*, or *Liberty*, for the terms are synonymous, is defined a royal privilege, or branch of the queen's prerogative, subsisting in the hands of a subject. To be a county palatine is a franchise vested in a number of persons. So it is to have the right of free warren, to hold a court-leet, or even for a number of persons to be incorporated, and maintain perpetual succession, and do other corporate acts; each individual being said to have a franchise or freedom.

Lastly, the reader will frequently meet with words terminating in "*or*" and "*ee*;" in all such cases, the former obtains an *active* signification, implying the person who does an act, the latter a *passive*, denoting him to whom the act is done. Thus, he that grants a lease is the *lessor*, and he to whom it is granted is the *lessee*; the person who indorses a bill of exchange is styled the *indorser*, and he to whom it is indorsed the *indorsee*.

## II. TENURES.

Nearly all the real property of England is supposed to be granted by, and holden of, some superior lord, in consideration of certain services to be rendered to the lord by the tenant or possessor of the property. Of this nature were tenures by *grand* and *petit serjeantry*, both of which imposed certain services relating to the king's person. By the 12 Car. 2, c. 24, which abolished the military tenures, commuting them for a grant of excise and customs, only the honorary service of grand serjeantry are reserved; such as carrying the king's sword or banner, officiating as butler or carver at the coronation, are retained.

Tenure in *Burgage* is that by which all tenements in *burghs* or walled towns were formerly held, and which is not entirely lost. This tenure was a rent certain, payable to the king or the lord to whom he had granted it, and differed nothing in effect from socage tenure. The citizens of London held in burgage of the crown, till they had a grant to hold in free burgage or common socage. *Burghs* are the ancient corporate towns, which sent members to parliament, the electors being the occupants of tenements in the burgh; and where the right of election was in the burgage tenure, it was a proof of the antiquity of the borough. *Borough* is a term also applied to towns and places enfranchised under the Reform Act, as Manchester, Birmingham, or Lambeth.

*Socage* tenure, in its most general signification, denotes a tenure by any certain and determined service, and is that tenure by which most free lands in England are holden. It is derived

from *soc*, a plough : and the service having been commuted into a rent, which has been bought off or extinguished, the land held in free or common socage is wholly exonerated, except under the legal fiction by which it is held of the sovereign, as the universal lord of the soil.

Tenure in *Gavel-Kind* has several peculiarities ; first, that not the eldest son only of the father shall succeed to the inheritance, but all the sons alike ; and, secondly, the estate does not escheat to the lord in case the ancestor is attainted, but descends to his heir, the maxim being, "the father to the bough, the son to the plough."

Tenure in *Borough-English*, which still prevails in Stafford and some other ancient boroughs, though its abolition has been recommended by the Real Property Commissioners, is that by which the youngest son inherits from the father. It is called borough-English, because, as some hold, it first prevailed in England ; and the reason of it is said to be, that during the feudal times the lord claimed the privilege of sleeping the first night with the vassal's bride ; so that the lands descended to the youngest, from the supposed illegitimacy of the eldest child.

*Copyhold* tenure is that for which the tenant has nothing to show but a copy of the roll, made by the steward in the lord's court, on being admitted to his tenements. Copyholders were anciently no more than villeins, who, by successive encroachments on their lords, at length established a customary right to their estates which before were held absolutely at the lord's will. No copyhold land can be made at this day, for the requisites of a copyhold estate are, that it has been devised time out of mind by copy of court-roll ; and that the tenement is parcel of or within the manor. In Ireland there are no lands of a copyhold tenure, but in England it is by this tenure that much of the landed property continues to be holden, under a relaxation of its more onerous ties and conditions. Copyhold land has been made inheritable with other land, and copyholders are eligible to serve on juries, and to the parliamentary franchise, and as the services anciently due from them are mostly fallen into desuetude, a copyhold estate has become nearly equal in value to a freehold. Subsisting manorial rights may be commuted, and copyholds enfranchised, under the provisions of 4 & 5 V. c. 35, amended by subsequent statutes, the latest 15 & 16 V. c. 51.

A *freehold estate* is any estate of inheritance, or for life, in either a corporeal or incorporeal hereditament, existing in or arising from real property of free tenure ; that is, new, of all which is not copyhold.

A tenant in *fee-simple* is one who has the absolute, unconditional, and freehold possession of a property to himself and his heirs for ever, without mentioning what heirs, but leaving

that to his own pleasure, or to the disposition of the law. It is the largest interest that can be held in real property, and is contradistinguished from a tenure in *fee-tail*, which is a limited inheritance. To create it, words of inheritance are necessary; that is, the conveyance must be to the grantee *and his heirs*, unless in case of wills, where equivalent expressions are admitted.

### III. CONVEYANCE OF PROPERTY.

The methods of acquiring real property are limited, by the laws of England, to two—*descent* and *purchase*.

*Descent*, or hereditary succession, is the title whereby the land or tenements devolve upon a man from his ancestors by act of law as heir. The *heir-at-law*, therefore, is he to whom the law assigns the estate immediately on the death of the ancestor; and an estate so descending to the heir is called an *inheritance*.

Descent at common law is *lineal* or *collateral*; *lineal* descent is from the father to the son, from the son to the grandson, and so forward: *collateral* descent is a side branch from the same stem, as from an uncle or a nephew.

Until the death of the ancestor, the person next in the line of succession is called either the *heir apparent* or the *heir presumptive*. The *heir apparent* is one whose right of inheritance is indefeasible, provided he outlive the ancestor; as the eldest son, or his issue. The *heir presumptive* is one who, if the ancestor die immediately, would, in the present state of things, be his heir, but whose right of inheritance may be defeated by some nearer heir being born: thus, the presumptive succession of a brother or nephew may be destroyed by the birth of a child; or that of a daughter by the birth of a son.

*Purchase*, the other mode of acquiring real property, is a term of wide signification in law, and is used in contradistinction to descent. If an estate come to a man from his ancestor without writing, that is a descent; but when a person takes anything from an ancestor by will, gift, or deed, in which the expressed agreement of the party is essential, and not as heir-at-law, that is a purchase.

In the act of 1833, for amending the law of inheritance, the word “purchaser” is declared to mean the person who last acquired the land otherwise than by descent, partition, escheat, or inclosure, by effect of which the land becomes descendible in the same manner as if acquired by descent; and “descent” is declared to mean the title to inherit land by reason of consanguinity. The word “land” in the act extends to manors, advowsons, messuages, and to chattels, and other personal property transmissible to heirs, and inheritable, 3 & 4 W. 4, c. 106, s. 1.

These appear the most important explanations before entering



on the subjects of the following chapters, which relate to tithe, common, merchant-shipping, and other incidents in the possession of property, and the mode in which property may be acquired by will and testament, by mortgage, bankruptcy, insolvency, contract, deed, award, bill of exchange, lien, &c.

## CHAPTER I.

### *Tithes.*

TITHES are defined, by Sir William Blackstone, to be a tenth part of the increase, yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants: the first species being usually called *predial*, as of corn, grass, wood, and fruit; the second, *mixed*, as of wool, milk, lambs, pigs, &c., and of these the tenth must be paid in gross; the third, *personal*, as of trade, occupations, fisheries, and the like, of which only a tenth part of the clear gain and profit is due. The great tithes, as of corn and hay, are generally payable to the rector or parson; the small tithes to the vicar. The successful application of the Commutation Act, by which many causes of dispute and litigation have been removed, renders less necessary a detailed exposition of the law on the subject of tithes.

In general, tithes are payable on everything that yields an annual increase, but not for anything that is of the substance of the earth, or is not of annual increase, as of mines, minerals, and the like; nor for creatures of a wild nature, as deer and hawks, whose increase, so as to profit the owner, is not annual, but casual.

Tithe is payable for the pasturing of cattle. Gardens, orchards, and nursery grounds yield a tithe of their produce if sold in the way of trade; but hothouse fruit, it seems, is not titheable. Timber wood yields no tithe, except when cut down and sold as firewood, or made into charcoal. Fish taken in the sea, or open river, are not titheable; but taken in a pond, or inclosed water, they are liable. Pigeons, honey, and bees'-wax, are titheable. So may deer and rabbits, though wild by nature, be titheable by special custom. But chickens are not titheable, if tithe has been paid for the eggs.

The tithe of milk is the tenth *meal*; that is, the milk yielded every tenth day.

Barren ground, which has never paid tithe, becomes liable if converted into pasture or meadow land, after the lapse of seven years from the first attempt to make it productive. Headlands,

being only large enough to turn the plough upon, do not pay tithes unless grain be grown upon them.

Mills for grinding corn are liable for the tenth of their profits if built since the year 1315. Ancient mills not liable to tithes, will become liable if the power of the mill is increased, and then tithe is payable for such increased power.

The tithe of all extra-parochial lands belongs to the queen, in right of her prerogative, *Attorney-General v. Lord Eurdley*, 8 Price, 39.

## II. PERSONS NOT LIABLE TO TITHES.

Day-labourers and servants in husbandry are not liable to personal tithes. The queen, by her prerogative, is discharged from all tithes. Nor is a vicar liable for tithes to his rector, nor a rector to his vicar. Persons holding the lands of any abbey, dissolved by the 31 H. 8, c. 13, are free and discharged of tithe in as ample a manner as the abbeys themselves formerly held them. It is from this provision that lands, which were formerly abbey-lands, now claim to be tithe-free. But this exemption does not extend to land belonging to the *lesser monasteries*; that is, of monasteries whose landed income did not exceed £200 per annum, and which were dissolved by the 27 H. 8, c. 28.

Lands may be exempt from tithe, first, by *composition*; and, secondly, by *custom*, or *prescription*.

A *composition* is when an agreement is made between the owner of the land and the parson, or vicar, with consent of the ordinary and his patron, that such land shall, for the future, be discharged from the payment of tithe, by reason of land, money, or other equivalent given to the parson in lieu thereof; but the 13 Eliz. c. 10, limits the exchange by restraining all parsons and vicars from making any conveyance of the estate of their churches for a longer period than three lives, or twenty-one years; so that no composition for tithe is good for a longer period than twenty-one years, though made with the consent of the ordinary and patron; nor is it binding on the succeeding incumbent, though confirmed by a court in chancery.

A discharge by *custom* or *prescription*, is when, time immemorial, certain persons or lands have been either *partially* or *totally* discharged from the payment of tithe. In the first case, a *modus*, or compensation, is substituted in lieu of tithe, as twopence an acre for the tithe of land; or an equivalent in work and labour, so that the parson shall have the twelfth cock of hay in lieu of the tenth, in consideration of the owner making it for him; or, instead of crude and unripe tithe, the parson shall have a less quantity, in greater maturity, as a couple of fowls in lieu of tithe eggs.

When land is *totally* exonerated from tithe, it must arise either

from being anciently abbey-land, the property of the crown, or some other cause already specified.

For a *modus* or equivalent to be good, it must be certain and invariable; it must be beneficial to the parson; it must be permanent and durable; it must be a fair and equitable composition; and till recently it must have existed *time out of mind*; that is, as before explained (p. 2), from the year 1189: so that a *modus* for anything introduced into this country subsequently to that year, as hops and turkeys, would be invalid; and clergymen have sometimes availed themselves of the difficulty of proving an uninterrupted usage for so long a period, to *resume* their tithes, though no reasonable doubt existed that a *modus* had been originally established.

But the hardship of the law in respect to *moduses* is abated by 3 W. 4, c. 100, amended by 5 W. 4, c. 83, which renders valid any exemption from tithe due to any but a *corporation sole*, on proof thereof for thirty years, unless payment of tithe is shown to have taken place prior to such thirty years, or that such exemption was made by agreement; and if such proof extend to sixty years, it is deemed absolute and indefeasible, unless paid by agreement: in case of a *corporation sole*, the exemption must have taken place during two incumbencies, and for not less than three years during the commencement of a third; but such exemption must be at least sixty years, and three years, unless by agreement.

Beside tithe, various other ecclesiastical dues are usually considered part of the revenues of the church; as *oblations*, *Easter-offerings*, *mortuaries*, and *surplice fees*. These are all either voluntary payments, or due by custom, upon particular festivals and season; or upon marriages, deaths, baptisms, and churching of women.

*Oblations* are certain customary offerings, payable on the death of individuals. *Easter-offerings* are payable from every person in the parish, of sixteen years of age and upwards, by the master or mistress of the family, after the rate of two-pence per head.

*Surplice fees* are payable for every marriage, whether by bans or licence; for every funeral, churching, or christening, according to the custom of the parish.

*Mortuaries* are claimed on the death of each person in the parish; if a person, after his debts are paid, leave chattels to the value of £6 and under £30, the mortuary is 3s. 4d.; if the value of £30 and under £40—6s. 8d.; if to the value of £40—10s. Beneficed clergymen are exempt from the payment of mortuaries except to the bishop of the diocese where they hold their benefice and reside.

## III. MODE OF RECOVERING TITHES AND DUES.

The ecclesiastical courts have no jurisdiction to try the *right* of tithes, unless between spiritual persons; in ordinary cases, between spiritual men and laymen, they can only compel the payment of them when the right is not disputed. So, in disputes about tithes, if the defendant plead any custom, modus, or composition, or other matter in which the right of tithing is involved, this takes the question out of ecclesiastical jurisdiction; for the law does not allow the existence of such a right to be decided by the sentence of a spiritual judge, who may be interested therein, without the verdict of a jury.

By 2 & 3 E. 6, c. 13, if any person carry off the *great tithe* of corn, hay, and the like, before the tenth part is duly set forth, or agreement made with the proprietor; or if he hinder the proprietor, or his deputy, from viewing and carrying away his tithe, such offender shall pay double the value of the tithe, to be recovered with costs, in an ecclesiastical court. By a preceding clause in the same statute, treble the value of the tithe so subtracted or withheld may be sued for in a temporal court.

A more summary method is provided by 7 & 8 W. 3, c. 6, for the recovery of *small tithes* under the value of 40s.; which enacts that, when a person refuses to pay them twenty days after demand, the clergyman may complain, in writing, to two justices of the peace, who, after summoning the party, are to hear and determine the complaint, and give a reasonable allowance for the tithe, and costs not exceeding 20s. Persons claiming an exemption may give security to pay costs, and try the question. When any quaker shall refuse to pay or compound for his tithes, two justices of the peace may summon him before them, and ascertain what is due from such quaker, and direct the payment, so that the sum ordered does not exceed £50; and upon refusal, levy the money. A like remedy is extended to *oblations* and *compositions* of the value of £10. 7 & 8 W. 3, c. 34; 53 G. 3, c. 127; 54 G. 3, c. 68.

In suits for the recovery of *church-rates*, it is provided by 3 & 4 V. c. 93, that the judicial committee of the privy council, or a judge of an ecclesiastical court, may order the liberation of any party imprisoned under a writ *de contumace capiendo*; but no such order to be made without the consent of the other party to the suit, except that in cases of subtraction of church-rate for an amount not exceeding £5, where the party in contempt has suffered imprisonment for six months and upwards, the consent of the other party to the suit is not necessary, so soon as the costs incurred by reason of the custody and contempt of such party shall have been discharged, and the sum for which he may have been cited into the ecclesiastical court shall have

been paid into the registry of the court, there to abide the result of the suit; and the party so discharged is released from all further observance of justice in the suit.

The situation of the London clergy is different from that of the clergy in other parts of the kingdom. In the reign of Hen. 8, continual altercations took place between the citizens and the clergy, relative to tithes and ecclesiastical dues. To put an end to these disputes, the 37 H. 8, c. 12, established a commission, at the head of which was the archbishop, with full power to give to their decrees the force of law, *if they were enrolled* in the Court of Chancery before the 1st of March, 1545. By a decree of this commission, the tithe of houses and buildings is directed to be paid quarterly, after the rate of 2s. 9d. for every 20s. yearly rent, and 2d. for each of the family, for the four yearly offerings.

By the 22 & 23 Car. 2, c. 15, the tithes of all the parishes injured in the great fire in 1666, are valued at certain yearly sums, to be levied by an equal rate, quarterly; and, on non-payment, the lord mayor is to grant a warrant of distress for the same; or, on his refusal, the lord chancellor, or two barons of the Exchequer, may grant such warrant. By 44 G. 3, c. 89, the annual composition for tithes in the parishes damaged by the fire is augmented and settled at certain fixed sums, from £200 to between £300 and £400 per annum. These tithes are a rent-charge on the houses, payable even if empty, and leviable on the goods of the succeeding occupiers.

From this it seems, the established clergy of London are divided into two classes. *First*, the clergy of the fifty-one parishes damaged by the Great Fire have a fixed annual stipend, leviable by an equal pound-rate on the parishioners, and the amount of which stipend and the mode of assessment of which are regulated by the 44 G. 3, c. 89. *Secondly*, the rest of the clergy claim 2s. 9d. in the pound on the rental, under the authority of a decree made pursuant to the 37 H. 8, c. 12, and the validity of which, after much litigation, has been established, *Macdougall, ap Purnes res, D. & C. 135.*

#### IV. COMMUTATION OF TITHES.

The 6 & 7 W. 4, c. 71, amended by subsequent statutes, provides for the conversion of all the uncommuted tithes in England and Wales into a corn rent-charge, payable in money, according to the value of a fixed quantity of corn, as ascertained from year to year by the average price of corn for the seven years ending at the preceding Christmas. A similar system, as applicable to rent, has long prevailed in Scotland, and its great advantage is, that it fixes the tithe at one invariable amount *in grain*, to be paid for in money at the average price. Three commissioners

are appointed, two by a Secretary of State and one by the Archbishop of Canterbury, removable at their joint pleasure. They sit at a board in London, and superintend the execution of the act. Duration of the commission limited to five years, and the end of the then next session of parliament.

For effecting a commutation, two methods are provided:—  
 1. By parochial agreement, voluntary on the part of a majority of persons having two-thirds interest in the land and tithes, but binding on the minority, if unappealed against, or no sufficient cause of objection shown. 2. By *compulsory* awards, which must be regulated and effected under the central board of commissioners. Parochial agreements, to be binding, must be confirmed by the commissioners, and compulsory awards are made by them; but the latter power, except in the case of a compulsory apportionment, after a voluntary agreement, did not come into effect till the 1st of October, 1838, previous to which time, a large portion of the tithes of the kingdom had been successfully commuted by parochial agreements.

The rule given by Mr. White for effecting a conversion of tithe is as follows:—1. Find the gross average money value of the tithe of a parish or district for seven years, ending Christmas, 1835. 2. Apportion the amount of that value upon the lands of the several tithe-payers. 3. Ascertain how much corn could be purchased with such amount; one third of it to be laid out in wheat, one-third in barley, and one-third in oats, at the average price ascertained by the weekly official returns of the price of corn, for the seven years preceding Christmas, 1835. 4. And lastly, in every *future year*, make payable the price of the same quantity of wheat, barley, and oats, at their average prices, founded on a like calculation of the official returns for the seven years ending at each preceding Christmas.

The tithe of *hop grounds* and market gardens is to be divided into two parts, ordinary and extraordinary: and the lands which go out of cultivation are to be relieved from the extraordinary charge, which is to be imposed on such as are newly cultivated. The tithe of land converted from *barren heath*, and which shall have been exempted, on that account, during any part of the seven years from tithe, or which (under peculiar circumstances of occupation) may have been entitled to exemptions, such as glebe and the like, is, upon notice, to be estimated according to the average of lands of the like description in the neighbourhood. *Moduses* are to be taken at their actual amount, the only change being that they will be called rent-charges instead of moduses, and will vary henceforth with the price of corn. The rent-charges are made liable to the same parochial rates and incumbrances as the tithes for which they are commuted. Commissioners have a discretionary power on appeal, in cases of *compulsory* awards, to

increase or diminish the average value calculated for a commutation to the extent of one-fifth.

By 2 & 3 V. c. 62, before the confirmation of any appointment after a compulsory award, the landowners and tithe-owners empowered to make a parochial agreement may enter into a parochial agreement for the commutation of Easter offerings, mortuaries, surplice fees, or the tithe of fish or fishing, or mineral tithes.

The 9 & 10 V. c. 73, empowers landowners to redeem the rent-charge agreed or awarded to be paid in lieu of the tithes of a parish, provided the rent-charge has not been apportioned, nor exceeds in amount £15. Separate rent-charge of any landowner not exceeding 20s. in amount, may be redeemed after apportionment. Considerations for redemption of rent-charges made payable to the governors of Queen Anne's bounty, to be applied in augmentation of benefices. By section 16, commissioners are empowered to declare that lands concerning which doubts have arisen after agreement or award of the rent-charge, but before apportionment in respect of tithe-exemption, by modus, customary payment, or otherwise, such lands shall be considered a separate district for commutation, and the residue of the parish remain subject to the original award.

Among the most beneficial results of the Commutation Act may be reckoned the diminution of lawsuits it has occasioned. The various modes of recovering tithes in the spiritual and civil courts, and before justices of the peace, which originated such unseemly disputes between the clergy and their parishioners, have been extinguished by the commutation of them. The mode of recovering the rent-charge, if in arrear, is by distraining for it upon the tenant or occupier, in the same manner as a landlord recovers his rent; and if the rent-charge shall have been forty days in arrear, possession of the land may be given to the owner of the rent-charge until the arrears and costs have been satisfied.

By 10 & 11 V. c. 104, the powers of the commissioners for the commutation of tithes were continued till October 1, 1850, unless sooner determined.

## CHAPTER II.

### *Commons.*

RIGHT of common is a privilege, by which a person claims to use what another man's lands, woods, or waters produce, without having an absolute property therein. It is one of those

properties legally termed incorporeal hereditaments, which presumably commence by some agreement between lord and tenant, and which through time have grown into a presumptive right.

Common of *pasture* is the right of feeding one's cattle on another's land. Commonable beasts are horses, oxen, kine, and sheep; *not* commonable, are goats, hogs, and geese. Common of  *piscary* is a liberty of fishing in another man's waters: as common of *turbary* is a liberty of digging turf upon another man's ground. Common of *estovers* is a right of taking necessary wood from another's estate for household use, and the making of implements of industry. There is also common for digging coal, stone, minerals, and the like; but the most general common right is that of pasture, and it is to that we shall limit our observations.

The *property* of the soil of the common is entirely in the lord, and the *use* of it jointly in him and the commoners; and the respective rights of the lord and commoner are ascertained by statute and usage.

In land subject to common right, the right of the lord of the soil ought to be so exercised as not to injure the right of the commoner to the surface. But the right of the commoner may be subservient to the right of the lord; so that the lord may dig clay-pits there without leaving sufficient herbage for the commoner, if it can be proved that such a right has been constantly exercised. He may also inclose part of the waste, whereby it ceases being common, provided he leave sufficient waste for the commoner. But when the tenants of the manor have a right to dig gravel or take estovers, the lord has no right to inclose and improve the waste of the manor.

A commoner has only a special and limited interest in the soil, yet he has remedies commensurate to his right. If a tenant inclose or build on the waste, every commoner may have an action for the damage. Where turf is taken away from the common, the lord only is to bring the action. A right of common is presumptively established by thirty years' use, and the right becomes absolute and indefeasible after sixty years' enjoyment.

By 13 G. 3, c. 81, in every parish where there are common fields, all the arable lands shall be cultivated by the occupiers, under such rules as three-fourths of them in number and value shall agree to; the expense to be borne proportionally. Persons having right of common, but not having lands in such fields, and persons having sheep-walks, may compound for such right by written agreement, or may have parts allotted to them to common. Lords of manors, with the consent of three-fourths of the commoners, may lease, for not more than four years, any part of the waste, not exceeding one-twelfth part; and the clear



rents reserved for the same shall be employed in improving the residue of such waste.

By 4 & 5 W. 4, c. 30, the proprietor of any land in *common field* may exchange it for any other land, whether lying in the same or another common field, or for any inclosed land lying in the same or an adjoining parish. For the exchange of land held in right of the church, the consent of the patron and bishop is necessary. The 6 & 7 W. 4, c. 115, provides for the inclosure of open and common arable, meadow, and pasture lands, lying intermixed and dispersed in parishes and townships, with the consent of two-thirds in number and value of the parties interested.

The 8 & 9 V. c. 118, in a general act, comprising 169 clauses, whose objects are described to be to facilitate the inclosure and improvement of commons and other lands now subject to rights of property which obstruct cultivation and the productive employment of labour, and to promote such exchanges of lands, and such divisions of lands intermixed or divided into inconvenient parcels, as may be beneficial to the respective owners; to provide remedies for the defective or incomplete execution and for the non-execution of powers created by general and local acts of inclosure, and to authorize the revival of such powers in certain cases. The eleventh clause restricts the powers of the act to commons, and stinted pastures in which no part of the property of the soil is in the owners of such cattle-gates, or stints, whether divided by metes or bounds or not; and it does not extend to wastes of manors in which the common right is indefinite; nor to the Forest of Dean and the New Forest; nor to within certain distances of large towns, the greatest distance being four miles, except the city of London, for which the distance is fifteen miles; while town or village greens are protected, but power is given to level and preserve the surface and to form boundaries. Commissioners to be appointed for the execution of the act, with secretary, &c. A proportional quantity of the land to be appropriated, according to population, for purposes of *recreation and amusement*, and for allotments to the labouring poor. Encroachments of more than twenty years' standing to be considered as valid, but not else, and school-houses are not to be deemed encroachments; a right given on proof of sixty years' usage; power is also given for the valuer to lay out water-courses, and to make and alter roads and ways. Land allotted for exercise or recreation to be vested in the churchwardens, who may let or sell the grass or herbage, the rents to be applied to the preservation and support of such land in good order, and it is also to be subjected to a rent-charge, which is to be divided among those having an interest in the same; or a person may take the same as a part or the whole of his allotment, in which case he must maintain the

fences, surface, &c., and suffer it to be used, the herbage only belonging to him. The allotments to the poor are subjected to a corn rent-charge, to be recoverable as tithe rent-charges; and these rent-charges are to be allotted to the persons possessing the legal interest. Section 108 appoints allotment wardens, for the management of the poor allotments, who are to let them as gardens, in quantities not exceeding a quarter of an acre, at rents to be fixed every ten years by the valuer, but free of all tithes and taxes whatsoever, which are to be paid by the wardens; and no dwelling is in any case to be suffered to be erected, or if erected is to be pulled down. If the rent is in arrear for forty days, possession may be resumed, as also if the occupier removes to a distance of more than a mile from the parish. The rents are to be applied to the payment of tithes, taxes, rent-charge, &c.: and the residue, if any, to go in aid of the poor-rates.

With reference to allotments, the 9 & 10 V. c. 70, enacts that where any allotment for *exercise or recreation*, or for any other public purpose, shall have been made the condition of any provisional or supplemental provision, the commissioners may, at any time before the valuer has made his award, allot an equal quantity of land in lieu of that allotted by the previous order; and s. 5, by which they may award rent-charges on the allotments to the lord of the manor, in lieu of any allotment of land to which he may be entitled. By s. 9, also copyhold and customary lands, though not subject to inclosure, may be exchanged under this act; as may also shares of land and cattle-gates and stints.

Allotments under inclosure acts are freehold, unless otherwise directed by the act of inclosure. The 11 & 12 V. c. 99, allows the commissioners in the case of an allotment of less value than five pounds to compensate the person entitled thereto, with his consent, by a payment in money.

Commons must be driven yearly at Michaelmas, or within fifteen days after.

## CHAPTER III.

### *Mortgage.*

MORTGAGE is a pledge of land, tenement, or anything immovable, bound for money borrowed, to be the lender's if the money be not repaid at the time stipulated: the borrower in these bargains is called the *mortgagor*, and the lender the *mortgagee*.

The perpetual alienation of real property was interdicted by the Mosaic law, which provided that no estate could be sold, or any way conveyed to another, for a longer period than the next

jubilee, which occurred every fifty years ; when, if not previously redeemed, it reverted, free of incumbrance, to the original owner and his heirs.

Although, by law, a mortgage is forfeited on non-payment of the sum borrowed at the time agreed on, yet a court of equity will interfere to prevent the sale : and, if the value of the mortgage is greater than the sum advanced, it will allow the mortgagor, within a reasonable time, to redeem his estate, paying to the mortgagee his principal, interest, and expenses : without this, an estate worth £500 might be forfeited for the non-payment of £50. The advantage thus allowed to the mortgagor is called the *equity of redemption*. But, on the other hand, the mortgagee may either compel the sale of the estate, in order to get the whole of his money immediately, or else call upon the mortgagor to redeem his estate ; or, in default, to be for ever foreclosed, and thus lose his equity of redemption.

But by the act of 1852, the 15 & 16 V. c. 86, s. 48, the Court of Chancery is empowered to direct a sale of mortgaged property instead of a foreclosure, on such terms as it may think fit. The court may order real estate to be sold, if required ; and, where real or personal estate is the subject of proceedings, it may allow to parties a portion or the whole of the annual income.

When the mortgagee is in possession, the mortgagor is barred by 3 & 4 W. 4, c. 27, at the end of twenty years, unless in the interim the mortgagor has received from the mortgagee some acknowledgment of his claim *in writing*.

A mortgage is often effected by a simple deposit of deeds : and if a memorandum in writing accompanies the deposit, equity will consider it a mortgage, and decree payment or sale of the property mortgaged. If no memorandum accompanies the deposit, the court will not readily interfere, and the lender has generally to go to a court of law for his money, retaining the deeds till he is paid. In a mortgage of real estate, the consent of the wife by deed is necessary to bar her of dower, if married before January 1, 1834.

It has become the practice, of late years, to insert in a mortgage an *absolute power of sale*, in case of breach of the condition of the deed ; this power it is not always advisable for the mortgagee to avail himself of, and it is almost invariably an objectionable power for the mortgagor to grant.

By 4 & 5 W. & M. c. 16, if any person mortgage his estate a second time, and do not inform the mortgagee, in writing, of the prior mortgage, or of any judgment or incumbrance he has voluntarily brought upon the estate, the mortgagee shall hold the estate as an absolute purchaser, free from the equity of redemption of the mortgagor. But the statute does not bar the

widow of any mortgagor from her dower, who did not legally join with her husband in such second mortgage, or otherwise exclude herself.

It is held to be an established rule of equity, that the second mortgagee, who has the *title deeds*, without notice of a prior incumbrance, shall be preferred; because the negligence of the first mortgagee, in lending money without taking the title deeds, enables the mortgagor to commit a fraud, 1 *T. R.* 762.

Whatever may be the value of the estate, it is of great importance to those who lend money upon real security to be certain that there is no prior incumbrance upon it; for it is settled, that if a third mortgagee, who, at the time of his mortgage, had no notice of the second, purchase the first mortgage, even pending a bill filed by the second to redeem the first, both the first and third mortgages shall be paid out of it before any share of it can be appropriated to the second; the reason assigned is, that the third, by thus obtaining the legal estate, has both law and equity on his side, which supersedes the mere equity of the second. But, in mortgages where none has the legal estate, the rule in equity is that the *prior mortgage has a prior claim*.

When two different estates are mortgaged to the same person, one cannot be redeemed without the other, *Amb.* 733. So of the other securities given by the mortgagor to the mortgagee.

The investment of estates of infants and lunatics on mortgage, unless under very special circumstances, is not allowed, 1 *Cooper*, 157.

The 3 & 4 V. c. 55, amended by 8 & 9 V. c. 56, enables the owners of settled estates to defray the expense of draining them, by way of mortgage. These acts apply to England and Ireland.

## CHAPTER IV.

### *Wills and Testaments.*

A WILL or testament is an act whereby a man declares his intention as to the disposal of his property after his decease.

The person who makes a will is called a *testator*; he who dies without a will is called an *intestate*.

A gift of land or tenements, by will, is called a *devise*; the person to whom they are given, the *devisee*; and the person who makes the will, the *devisor*.

#### I. DESCRIPTION OF WILLS.

Wills are of two kinds, *written or verbal*; the latter is called a nuncupative will, being made by word of mouth before wit-

nesses; and, till recently, was legal in case of sudden illness or emergency, if afterwards reduced to writing. But a verbal will never extended to the real estate, only the personal; and of the personal estate it was invalid, if the value of the property bequeathed exceeded £30, unless proved by the oaths of three witnesses present at the utterance of the same. All verbal wills, however, made subsequent to December 31, 1837, are rendered invalid, except those of soldiers in actual service, and of sailors at sea, who may dispose of their personal property as heretofore.

The 1 V. c. 26, besides rendering void all future parol or nuncupative wills, effects other important changes in the old law of testamentary disposition. 1. Wills of *personal* estate must now be attested by two or more witnesses in the same manner as devises of *real* estate, which, however, will no longer require the presence of three witnesses. 2. All devisable estates, real, personal, freehold, or copyhold, are now placed on the same footing, in the mode of devising them. 3. The power of devise extends not only to property possessed by the testator at the time of making his will, but to that he may subsequently acquire up to the time of his death. 4. No will of a person under twenty-one years of age is valid; nor of a married woman, except such as might be made before the act. This abolishes the power of infants to bequeath personalty, and, in certain manors, copyhold estates. 5. Legacies to an attesting witness, or his or her wife or husband, are void. Therefore, if a testator wishes to give anything to an attesting witness, he must do it in some other way than by a legacy. But creditors and executors can be attesting witnesses. 6. Marriage revokes a will previously made; otherwise a will can only be revoked by being destroyed by the testator, or by his direction with intent to revoke, or by the execution of a new will. Alterations in wills must be made in the same way as a will is made: that is, must be witnessed and signed. 7. Lastly, wills must be hereafter construed as if made immediately before the death of the testator, unless a contrary intention appears from the terms of the will itself.

The act does not extend to Scotland.

Prospectively, the statute has greatly simplified and better secured testamentary dispositions; but it must be borne in mind that the old law continues in force, both as to written and verbal wills, made prior to January 1, 1838.

## II. PERSONS NOT QUALIFIED TO MAKE A WILL.

The following persons, either for want of sufficient discretion, or for want of free will, or for criminal conduct, are deemed unqualified to dispose of property by will:—1. Infants under twenty-one years of age. 2. Idiots, lunatics, and persons in

their dotage; but the wills of persons in sound mind at the time of making their wills, are not affected by subsequent insanity or infirmity. 3. A man born deaf and dumb. 4. A drunken man, when so far intoxicated as to be deprived of his reason, unless it appear he had sufficient understanding to comprehend his act. 5. A person convicted of felony cannot make a will, unless he is pardoned, which restores him to competency. 6. Outlaws, whether for crime or debt, cannot bequeath, for their property is forfeited by outlawry. A suicide may devise the *real* estate, but the *personal* estate is forfeited: the crown, however, restores the forfeiture to the widow or nearest of kin.

A married woman is incapable of making a will without the consent of her husband. But, if her husband be transported for life, she may make a will, and act in everything as a single woman. If a married woman have any pin-money, or separate maintenance, she may bequeath it without the husband's consent.

### III. PROPERTY DEVISABLE BY WILL.

By the Wills Act, all property, whether real, copyhold, or personal, is placed on the same footing, and may be devised in the same manner. Formerly, no *real* estate could be devised for longer than a term of years; but now every person is enabled to dispose of the whole of his landed property to whom and what object he pleases, and that even to the total disinheriting of the heir-at-law, notwithstanding the vulgar error of the necessity of leaving the *heir a shilling*, or some other legacy, effectually to disinherit him.

Some restraints, however, are still continued on devises to *charitable uses* by the Mortmain Acts, which were intended to check the accumulation of land in the hands of religious or corporate bodies, by which it became comparatively unproductive; and also to control the weakness of those who vainly thought to extenuate the wickedness of their lives by leaving their property to be applied to works of piety or charity. The last act of this description is the 9 G. 2, c. 36, and probably the provisions of this law might be safely repealed, in an age inclined to be sceptical in matters of faith, and which, under the guidance of the new school of political economy, is not likely to fall into excess either of posthumous or contemporary benevolence. By this act, no lands or tenements, or money to be *laid out therein*, shall be given for or charged with any charitable use whatever, unless by *deed* indented, executed in the presence of two witnesses, twelve calendar months before the death of the donor, and enrolled in the Court of Chancery within six months after its execution, and unless such gift be made to take effect *immediately*, without the power of revocation. Devises to the two universities, and to the colleges of

Eton Winchester, and Westminster, are excepted out of the statute; and by 5 G. 4, c. 39, s. 3, to the British Museum.

In the opinion of Lord Hardwicke, persons are at liberty to leave *by will* a sum of money, or other *personal* property, to works of charity, provided it is not directed to be invested *in land*. And by 43 G. 3, c. 107, every person is at liberty, by deed or will, to give real or personal property for the augmentation of Queen Anne's bounty. Another act, in the same year, allows devises by deed enrolled, or will executed three calendar months before the death of the testator, of real or personal property to the amount of £500 for the repair of any church or parsonage-house.

By 1 W. 4, c. 40, the undisposed of residue of testators' estates goes to the executor or trustees for the next of kin, unless executor was intended to take beneficially. This act is extended, by 11 & 12 V. c. 89, to the lands of deceased debtors.

#### IV. DIRECTIONS FOR MAKING A WRITTEN WILL.

It is not necessary a will should be written on *stamped* paper: no stamp-duty attaches till after the death of the testator, and the will is proved in the proper court in the district within which the testator died. Whether a will be on paper or parchment, or any other material, is of no consequence; nor what hand it be written in; nor whether some words be omitted, or the name be written at large, or only by notes or characters; the most essential points are that the will be *legible*, and so far *intelligible* that the intention of the testator can be collected from it.

The chief points to be observed in making a will are the following:—

1. A will of any kind of property must be in *writing*.
2. If the testator does not sign, it must be signed by some other person in his presence, and by his direction.
3. The signature must be made, or acknowledged, by the testator, in the presence of *two* or more witnesses present at the same time.
4. The witnesses must attest and subscribe the will or codicil in the presence of the testator, and attest that the will was signed, or his signature acknowledged, by the testator in their presence.

Lastly, in respect of the signature of the testator, an act of 1852 has introduced some amendments. The Wills Act provides that "no will shall be valid unless it be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction." But on this proviso the 15 V. c. 24, enacts as follows:—"Every will shall, so far only as regards the position of the signature of the testator, or of the person

signing for him as aforesaid, be deemed to be valid within the said enactment, as explained by this act, if the signature shall be so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said act or this act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made."

The act applies to every will already made where administration or probate has been granted by a court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the ecclesiastical courts, has not been possessed by some person claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person than the person claiming under the will, by a court of competent jurisdiction, in consequence of the defective execution of such will, s. 2.

In the case of two devisees of the same estate to different persons in the same will, the latter shall not defeat the former; but both devisees shall take the moieties, and have the estate either in common or joint tenancy, as the words in the will seem to point out.

Wills under the influence of importunity or coercion are void, although the restraint was merely imaginary, the will being contrary to the wishes of the testator.

Any fraud or imposition vacates a will, and the courts of



equity and ecclesiastical courts have a concurrent power to investigate the facts. In general, the intention of the testator is so entirely regarded in the construction of wills, that any kind of disposition, not expressly contrary to the rules of law, constitutes a valid will.

When two wills are made, and neither of them dated, the maker is declared to have died intestate, it being impossible to ascertain which is the last will.

As to the time and manner of the *attestation*, it is necessary the witnesses subscribe the will in the presence of the testator; and their business is not only to witness the manual act of signing, but also to bear testimony to the *sanity* of the testator.

In a devise of real estates, the witnesses retired and attested the will in an adjoining room, a wall only of which was visible from the bed in which the testator lay, so weak as to be incapable of moving without assistance. It did not appear in what part of the room the witnesses signed the will, but it was held duly attested, the jury finding it attested in such a place that the testator had the *means of seeing* what was done. *Todd v. Earl of Winchilsea, Moo. & Malk, 12.*

It is not material in what form, or in what part of the will, the attestation is made; it is sufficient though each witness write his name on separate sheets of the will, and that although the sheets be not tacked together.

The *publishing* of a will, that is, the testator declaring that such is his will, is not now requisite, signing and attesting being sufficient.

#### V. REVOCATION OF A WILL.

With whatever form and solemnity a will may be made, the testator is at full liberty afterwards to revoke or annul it. But no will can be revoked by any *words*, or by word of mouth only; it can only be done by the testator's purposely burning or destroying the original will, or by some subsequent will or codicil, in writing, duly attested, by which the former will is repealed.

When a man, having made a will, afterwards makes another contrary to it, without expressly revoking the former, this is a revocation in law; the fact of making a new will implying that the testator had *mentally* revoked the old one. But such an implied revocation will not hold unless the dispositions of the second will be clearly incompatible with the first, and the second will be effective at the death of the testator.

The alteration of a will is only a revocation to the *extent* of the alteration; and the alteration must be made with the *same* forms as the will; that is, must be witnessed and signed.

Marriage revokes a will previously made.

A codicil is a revocation of a will, if contrary to it; but so

far only as it is repugnant to the particular disposition of the will, leaving it in all other respects undisturbed

A will may also be revoked on the ground of mistake in the intention of the testator but when a testator revokes a legacy, under an obvious misapprehension of the facts, as, for instance, that the legatee is dead, who, in truth, is alive, the revocation fails

## VI CODICILS

A codicil is a supplement or addition made to a will by the testator adding to, explaining or altering some part of his former disposition. It may be written on the same paper, or affixed to or folded up with the will or it may be written on a different paper and deposited in a different place

In general, the law relating to a codicil is the same as that relating to wills, and the like guarantees of signature and attestation are required

Though a man can properly make only one will he may make as many codicils as he pleases and the last is equally valid with the first, if not contradictory

If, by two codicils the same thing is given to two individuals, the law enjoins that they must divide it between them

## VII PRACTICAL REMARKS ON WILLS

In making a will a person should be careful to give such a description of himself as may avoid any confusion or uncertainty. This description is called in law his *addition* and means the designation of his christian and surname, his place of abode, trade and occupation. Care should also be taken in describing the *legacies* lest the objects of the testator's bounty fail in their legal claims

In making a provision for natural children pains should be taken to describe them correctly, so that they may not be excluded by the heir-at-law

When a person is desirous of leaving a legacy to a *married woman* if he does not appoint trustees over it, and give specific directions that it shall be for her sole and separate use free from the control, debts, and incumbrances of her husband, the husband, by virtue of the marital tie, will be entitled to the legacy. Without the like precaution, a legacy to a *single woman* will by the operation of law vest in the husband in the event of her marriage but a bequest to a married woman, "solely and entirely for her own use and benefit during her life," has been held to be "a bequest for her life for a separate use," 2 *Collyer*, 247

The operation of the *stamp duties* is of importance to persons possessed of little property, and a considerable saving is made

by persons making a will in preference to dying intestate, and leaving their effects to be administered to by the next of kin. In the latter case, the stamp duty is half as much more as in the former.

Freehold and copyhold estates are exempt from duty; which is an advantage to the heir-at-law over other relatives, that ought not to be forgotten by the testator.

The legacy duty only commences when the bequest is of the amount and value of £20; so that a legacy of £19 19s. 11d. instead of £20 saves £2 in duty, in case the legatee is not a relation by blood.

In legacies to *servants*, if the testator intend the duty should be paid by the executors, out of the residue, such intention should be clearly expressed; otherwise, by the abstraction of the duty, they may receive much less than the donor intended.

If there be two legacies to the same person, and if, together, they amount to £20 in value, the duty is rated jointly on both.

Lastly, it is recommended to the testator, besides the original will, that he should write and execute two or more copies; they will guard against accidents, be useful to executors and friends, and save expense: for, after a will is proved, a copy cannot be obtained without considerable trouble and cost; and as to going to *read* a will at the Prerogative Court, without professional aid, which may be still more onerous, it had better not be attempted.

## CHAPTER V.

### *Intestacy.*

A PERSON dying without a will, or without a will executed according to the legal forms described in the last chapter, is said to die **INTESTATE**: in this case, it is important to inquire in what manner the law disposes of the property of an intestate, conformably to the rule of heirship or hereditary descent; and, first, of the *real estate*.

The eldest son inherits, as heir-at-law, the real property of an intestate. If the eldest son is dead, his eldest son, or issue, succeeds to the land. If the eldest son is dead, without issue, then the lands descend to the second, third, and all other sons of the intestate respectively, in order of birth, and to their issue, in like order.

If a man has no sons, nor any issue of them living at his death, his daughter is to inherit; or if he has more than one daughter, they all inherit equally, and become joint partners in the land. If the daughters are dead, leaving issue, such issue inherit the land, the eldest son of each taking his mother's share; or if no son, then daughters equally.

If a man die without either sons or daughters, the land descends to his eldest brother of the *whole blood*, or his issue; or, in case of the death of the eldest brother, without issue, then to his second, third, or other whole brothers respectively, in order of birth, or their issue. If the intestate has no brothers, then to his sisters of the whole blood equally. If he has neither sons nor daughters, brothers nor sisters, the land goes to the eldest uncle by the father's side, and his issue; or for want of such, to his other uncles, by the father's side. In defect of all these, to his aunts on the father's side, equally among them all, in like manner as to his daughters and sisters.

The law of inheritance, in failure of lineal descendants, described in the last paragraph, applied only to descents which took place prior to January 1, 1834, from which time 4 W. 4, c. 106, s. 6, came into force: by which it is enacted, that the *lineal* ancestor may be heir in preference to a *collateral*. The effect of this alteration of the old law of descent is, that the ascending line, in every instance, comes into the succession immediately after the descending. Thus the father succeeds before brothers and sisters, and the grandfather before uncles and aunts.

Hitherto, in the descent of lands, relations of the *half blood* could never inherit. Thus, if a man had two sons by different wives, and died, and his first son took the land as heir to him, and died without issue, the son by the other mother being only his *half* brother, could never inherit the land as heir to his brother. But in the act just mentioned, the distinction between the whole and the half blood is in a great measure abolished; and the law of succession to *real* property made more conformable to that of *personal* estate; in the distribution of which, as described in the next section, the half blood share equally with the whole blood.

## II. DISTRIBUTION OF THE PERSONAL ESTATE.

The division of the *personal* property of an intestate is regulated by the 22 & 23 Car. 2, c. 10, called the Statute of Distributions, which provides, that the surplusage of the effects of an intestate, after paying his debts and funeral expenses, shall, after the expiration of a year, be distributed by the administrators, in certain proportions.

If the deceased leave a widow and children, one-third to the widow, and the remaining two-thirds, in equal portions, to the children; or if any of the children be dead, to their issue in equal portions. If the intestate leave no children, nor lineal descendants of children, then a moiety goes to the widow, and the residue to the nearest of kin of the deceased or their representatives. If the intestate leave children, but no widow, then

the whole is distributed among the children ; or if any of them be dead, among their representatives.

If a child shall have been portioned, or otherwise provided for, by the father during his lifetime, to an amount equal to the distributive share of the other children, he shall be excepted from this distribution ; and if he shall have been in part provided for, he shall have only so much of the surplusage as will make his share equal to the rest. But the *heir-at-law* will have his *full* distributive share, notwithstanding the land he may receive by descent ; if, however, he has had an advance in money, he abates the same as another child.

If there is neither wife nor children living, nor representatives of children deceased, the whole property of the intestate is given to the father of the deceased. If he has no father living, the whole shall go to the mother, brethren, and sisters of the deceased, in equal portions. If there are neither brothers nor sisters, the whole shall go to the mother.

If the mother be dead, the whole must go to the brothers and sisters, and their children ; but, if there are neither mother, brother, nor sister, then the whole must go to the grandfather or grandmother.

After these, uncles, aunts, and nieces of the intestate are admitted in equal portions. And, on failure of all the above-mentioned relatives, then the whole shall go to the next nearest of kin who shall be alive.

## CHAPTER VI.

### *Legacies.*

A LEGACY is a bequest or gift of money, goods, or chattels, by will or testament : the person to whom it is given is called the *legatee* ; and if the gift is of the residue of an estate after the payment of debts and other legacies, he is called the *residuary legatee*.

The bequest of a legacy confers only a contingent or inchoate property on the legatee, which does not become complete till the assent of the executor or administrator with the will annexed, as the case may be, has been given. But before such assent the bequest is transmissible to the personal representative of the legatee, and will pass by his will. The assent of executor or administrator, however, cannot be refused, except so far as this, that he is not bound to admit that there is any property due to the legatee till the debts of the deceased are first paid.

If executors omit to pay legacies at the expiration of one year after the death of the testator, the legatees will be entitled

to interest from that period. But no action can be brought for the non-payment of a money legacy; the Court of Chancery being the proper jurisdiction for redress, *Deeks v. Strutt*, 5 T. R. 690. Generally an executor cannot be compelled to pay legacies until after the expiration of twelve months from the testator's decease, and not even then, unless the assets should be realized, and the debts paid and provided for; but, as the rule is only for the several convenience of executors, if it should appear that all the debts of the testator are paid, the executor may be compelled to pay legacies before the twelve months have expired.

Interest is payable from the testator's death on a legacy to a natural child, with directions to apply a competent part of the interest for its maintenance, 3 *Swinst.* 689.

In case of a deficiency of assets to pay the debts, all the general legacies must abate proportionally; but a specific legacy of a piece of plate, a horse, or the like, is not to abate, unless there be not sufficient without it. And, if the legatees have been paid, they are afterwards bound to refund a rateable part, in case debts come in more than the amount of the residue after the legacies are paid.

If a legatee die in the lifetime of the testator, the legacy falls into the residue of the personal estate; but, if the bequest is so clearly worded as to show the testator intended it to go to the children or representative of the legatee in case of his death in the testator's lifetime, the legacy will not fall into the residue.

If a contingent legacy be left to any one, as when or if he attain the age of twenty-one, and if he die before that time, it is a *lapsed* legacy. But a legacy *to be paid* when he attains the age of twenty-one years is a vested legacy; and if the legatee die, his representative shall receive it at the time it would have become payable had the legatee lived. The reason of this distinction is, that the insertion of the words "*to be paid*" have the effect of *immediately* vesting the legacy, and the period mentioned is not a condition of payment, but the completion of the time when the legatee should be put in complete possession.

But the old rule in respect of *lapsed legacies* has been modified by the Wills Act; and the 1 V. c. 26, s. 33, provides that when legacies are bequeathed to a child or other issue of a testator, who shall die in his lifetime, leaving issue, and such issue shall be living at the testator's death, the legacies shall not lapse, unless a contrary intention shall appear upon the face of the will; but shall take effect as if the legatee had died immediately after the testator.

General conditions imposed on legatees not to marry are void, as *immoral*, by tending to prevent the multiplication of the species: but conditions which restrain marriage within a

reasonable time, or to particular persons, are good, because the liberty of marriage is not taken away, only a qualification imposed, which may be expedient. So a condition by a husband, that his wife shall be entitled to a legacy he has left her only so long as she continue his widow, is binding.

Legacies bequeathed to married women ought, in general, to be paid to their husbands; but the executor, with the consent of the wife, may withhold the payment of such legacies till the husband consent to a suitable provision or settlement on the wife.

An inaccurate description or addition of a legatee, correctly named, will not destroy the effect of a legacy given to him by nomination. So, also, if the testator mistake the name of the thing bequeathed, having no other thing to which the term can be applied, the wrong description of the bequest will not defeat the legacy.

In leaving two separate legacies of the same amount to the same person, it is proper to express whether the second legacy be an addition to, or in lieu of, the first legacy.

Unless the testator has otherwise directed, the residuary legatee is entitled, not only to what remains after the payment of debts and legacies, but, also, to whatever may fall into the residue after the date and making of the will.

No legacy can be recovered in any court after twenty years next after a present right to receive it accrued to some person capable of giving a discharge or release for the same, unless some principal or interest has been paid thereon, or an acknowledgment in writing, signed by the party liable to pay, or his agent, and then only within twenty years after the last of such payments or acknowledgments; and the recovery of interest is limited to the last six years.

Legacies to witnesses to a will are void by 1 V. c. 26.

## CHAPTER VII.

### *Bills of Exchange.*

A BILL of exchange is a mercantile contract, generally written on a broad but short slip of paper, whereby one person orders or requests another to pay a certain sum of money, on his account, to a third person, or to his order, at a time therein specified.

The person who makes or draws the bill is termed the *drawer*; he to whom it is addressed is, before acceptance, called the *drawee*, and afterwards the *acceptor*; the person for whom it is drawn is termed the *payee*, and when he endorses the bill the *endorsor*; and the person to whom he transfers it is called

the *endorsee*; and in all cases the person in possession of the bill is called the *holder*.

Bills are either *foreign* or *inland*; *foreign*, when drawn by a merchant abroad upon his correspondent in England, or the contrary; *inland*, when both the drawer and drawee reside in the kingdom. Formerly, foreign bills were regarded of more importance, in the eye of the law, than inland bills; but now they are both nearly placed on the same footing, and the law and custom of merchants in regard to one extend equally to the other.

Inland bills generally consist of one piece of paper; but foreign bills generally consist of several *parts*, in order that the bearer, having lost one, may receive his money on the other. The several parts of a foreign bill are called a *set*; each part contains a condition that it shall be paid *provided the others are unpaid*.

By the *Mercantile Law Amendment*, of 1856, the 19 & 20 V. c. 97, s. 7, every bill of exchange or promissory note drawn in any part of the United Kingdom or the Channel Islands, or islands adjacent, and made payable in, or drawn upon any person resident within those dominions of her majesty, is deemed an inland bill.

No particular form or set of words is necessary in a bill, any more than in a bond or other deed: the following, however, is the usual style of foreign and inland bills:—

#### Form of a Foreign Bill.

*Exchange for 5000 Francs.*

*London, 1st March, 1839.*

*At twenty days after date [or at one or two usance, or at sight, or certain days after sight, as the case may be], pay this my first bill of exchange (second and third of the same tenor and date not paid) to Messrs. Arthur Jones and Co., or order [or bearer], five thousand Francs, value received of them, and place the same to account, as per advice from*

ROBERT ANDREWS.

To Messrs. Dumont and Mallecot,  
Banquiers, Paris.

#### Form of an Inland Bill.

£100

*London, 3rd March, 1839.*

*Two months after date [or at sight, or on demand, or certain days after sight, as the case may be], pay to Mr. Thomas Brown, or order, one hundred pounds. Value received.*

DANIEL HARDCASTLE.

To Mr. Henry Heaps,  
Hosier, Bristol.



The chief property of a bill of exchange is, that it is *assignable* to a third party not named in the bill, so as to vest in the assignee a right of action in his own name; which right of action, no release by the drawer to the acceptor, nor set-off, or cross demand due from the former to the latter, can affect.

[See *Scotland*, in the DICTIONARY, on Inland Bills.]

## II. PARTIES TO A BILL OF EXCHANGE.

Persons under age, and married women, are incapable of being parties to a bill of exchange.

But though no action can be maintained on a bill drawn, endorsed, or accepted by persons so incapacitated, yet it is valid against all other competent parties thereto. Thus, in an action against the acceptor of a bill by the endorsee, it is no defence that the drawer was at that time an infant, or *feme covert*; for, though the holder is precluded from suing any anterior party, he will still be at liberty to sue any subsequent party to the bill.

As agency is a ministerial office, persons incapable of contracting in their own right may be agents for this purpose. A bill drawn, endorsed, or accepted by the party's agent, is said to be done by *procuration*. But, in such case, it is incumbent on the agent, if required, to produce his authority to the holder, and if he do not, the holder may treat that bill as dishonoured.

When a person acts as agent in a bill, he must either write the name of the principal, or state, in writing, that he acts as agent, otherwise the act will not be binding on the principal; and, if a person act in his own name, without stating that he acts as agent, he will be personally liable, unless in the case of an agent contracting on behalf of government.

Corporations, by the intervention of their agents, may be parties to a bill of exchange.

## III. REQUISITES OF A BILL.

The two principal requisites to a good bill are, first, that it is payable *at all events*, not dependent on any contingency, nor payable out of a particular fund; and, secondly, that it be for the *payment of money only*, and not for the payment of money and the performance of some other act, as the delivery of a horse, or the like.

If, however, the event on which the payment is to depend must inevitably happen, it is of no importance how long the payment is deferred. Therefore, if a bill be drawn, payable six weeks after the death of the drawer's father, or payable to an infant when he shall come of age, it is valid and negotiable; so, an order to pay money as the drawer's quarter or half-pay, by advance, is a good bill.

A bill cannot be given in evidence either in law or equity unless it be *duly stamped*, not only with a stamp of the proper value, but also of the proper denomination.

The *date of a bill* ought to be clearly expressed in words. But the date is not essential to the validity of the bill; for, when the date has been omitted, it will be intended to bear date on the day when it was made. The omission of the date for the purpose of the holder supplying the date at his convenience renders the instrument void; being an interference with the operation of the stamp duties.

The *negotiability* of a bill depends on the insertion of sufficient operative words of transfer. The modes of making a bill transferable are by making it payable to A. or order, or to A. or bearer, or to bearer generally.

If a bill, after it has been drawn, accepted, or endorsed, be *altered* in any material respect, without the consent of the parties bound therein, it will discharge them from all liability. But the mere correction of a mistake, as by inserting the words "or order," will not vitiate the bill, if made before the bill was circulated.

It is not essentially necessary to insert the words "*value received*," they being implied in every bill and endorsement. But, to entitle the holder of an inland bill of £20 and upwards, to recover, in default of acceptance or payment, these words should be inserted.

#### IV. OF THE CONSIDERATION.

A bill is presumed to have been originally drawn upon a good and valuable *consideration*. But a want of sufficient consideration may be insisted on in defence to an action on a bill; and when the bill is for *accommodation*, and the holder has given value only for a part of that amount, he cannot recover on the bill beyond that sum.

The bill may be void if the consideration given has been made illegal by statute; as for signing a bankrupt's certificate, for money won at *gaming*, or for money bet, or on an *usurious* contract. But, with respect to gaming, it is held that a bill founded on a gambling transaction is good in the hands of a *bond fide* holder; and by the 58 G. 3, c. 93, a bill or promissory note, though founded upon an usurious contract, does not vitiate the same in the hands of a *bond fide* holder, not knowing the usurious contract.

Dropping a criminal prosecution, suppressing evidence, or compounding a felony; a recommendation to an office in the queen's household; a smuggling or stock-jobbing contract, are all illegal considerations.

A bill or promissory note given for past seduction is valid: but for future prostitution illegal.

No person can insist upon a want of consideration, who has himself received one; nor can it ever be insisted on if the plaintiff, or any intermediate party between him and the defendant, took the bill *bonâ fide* and upon good consideration.

#### V. ACCEPTANCE OF A BILL.

An acceptance is an engagement to pay a bill according to the tenor of the acceptance; which may be either *absolute* or *qualified*. An *absolute* acceptance is an engagement to pay the bill according to its request, which is done by the drawee writing "Accepted" on the bill, and subscribing his name; or writing "Accepted" only, or merely subscribing his name at the bottom or across the bill. Any act, indeed, of the drawee, which demonstrates an intention to comply with the request of the drawer, will amount to an acceptance. An expression *Leave the bill and I will accept it*, or a direction to a third person to pay the bill *written* thereon, is a sufficient acceptance. A verbal promise that, *if the bill came back, he would pay it*, was held a good acceptance.

An acceptance may be *implied* as well as *expressed*: and this implied acceptance may be inferred from the drawee keeping the bill a great length of time, or any other act which induces the holder not to protest it, or to consider it as accepted. But a promise to accept a bill not then in existence is void, unless it influence some person to take or return the bill.

A *qualified* acceptance is when a bill is accepted conditionally; as when goods conveyed to the drawee are *sold*, or when a navy-bill is *paid*, or other future event, which does not bind the acceptor till the contingency has taken place, when such conditional acceptance will become as binding as an absolute acceptance.

An acceptance may also be *partial*: as, for instance, to pay £100 instead of £150, or to pay at a different place or time from that required by the bill. But, in all cases of a conditional or partial acceptance, the holder should, if he mean to resort to the other parties to the bill, in default of payment, give notice to them of such conditional or partial acceptance.

By 19 & 20 V. c. 97, no acceptance of any bill of exchange, whether inland or foreign, made after December 1, 1856, will be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part, on one of such parts, and signed by the acceptor, or some person duly authorized by him.

A bill need not be presented for acceptance when it is payable at a certain day, because the time is then running on equally, whether accepted or not, and the responsibility of the drawer is not protracted. If it be payable at a certain time *after sight*,

then it is necessary to present it within a reasonable time, because, by not doing so, the responsibility of the drawer is indefinitely protracted. *Bayley on Bills*, 112.

When the drawer refuses to accept, any third party, after protesting, may accept for the honour of the bill generally, or for the drawee, or for a particular endorser: in which case, the acceptance is called an acceptance *supra protest*.

The alteration of the date of a bill after acceptance, whereby the payment would be accelerated, vacates the instrument; and no action can afterwards be brought upon it even by an innocent endorsee for a valuable consideration. *Muster v. Millar*, *Prat. Dig.* 207.

If a bill be drawn on several persons, not connected in co-partnership, an acceptance by one will bind him, but him only. But, in the case of joint traders, an acceptance by one will bind the rest.

In case of the failure of the drawer, the drawee ought not to accept bills after he is aware of that circumstance. But if the drawee, not having notice of the bankruptcy of the drawer, accept a bill drawn upon him after such bankruptcy, he will be justified in payment of such acceptance, although he has afterwards heard of such bankruptcy.

A bill payable at the house of the acceptor's banker must be presented for payment within the usual banking hours, which in London do not extend beyond five o'clock. If it be presented after such hours without effect, it is no evidence of the dishonour of the bill, so as to charge the drawer.

If a bill is made payable after sight, the date of the acceptance should appear thus:—"Accepted, Jan. 1, 1827."

By the 1 & 2 G. 4, c. 78, bills accepted, payable at a banker's or other place, are to be deemed a *general* acceptance; but if they are accepted, payable at a banker's or other place *ONLY*, and not otherwise or elsewhere, they are to be deemed a *qualified* acceptance, and the acceptor is not liable to pay the bill, except in default of payment, when such payment shall have been first duly demanded at such banker's or other place only. It is also provided, by the same act, that no acceptance of any *INLAND* bills of exchange is sufficient to charge any person, unless such acceptance be *in writing on the face of such bill*, or, if there be more than one part of such bill, on one of the said parts.

In case of *accommodation* acceptances, it is advisable to have a written undertaking, or a counter bill or note from the drawer.

[See *Scotland*, in *DICTIONARY*, on bills.]

#### VI. LIABILITIES OF ACCEPTORS.

The acceptor of the bill is liable to all the parties for pay-

ment, from which obligation he can only be relieved by express release, or the Statute of Limitations; but, in the latter case, though six years have elapsed, the acceptor's liability revives, if he *acknowledge* his acceptance, *Leaper v. Tatton*, 16 *E. R.* 420; such acknowledgment, however, by 9 G. 4, c. 14, must be *in writing*, signed by the party to be charged therewith. Even the drawer may maintain an action against the acceptor, provided he has paid the bill, and has effects in the hands of the acceptor. Neither can the acceptor discharge his liability by the erasure of his name, unless his acceptance has been made by mistake.

A verbal release of the acceptor's liability would suffice; but to render this efficient, the words must amount to an absolute renunciation of all claim upon him for the bill.

If a bill be presented, and an acceptance refused, or a qualified acceptance only offered, or other objection made, prompt notice must be given to all the parties to whom the holder intends to apply for payment.

In case of a *foreign* bill, notice may be given on the day of the refusal to accept, if any post, or ordinary conveyance, sets out on that day; and, if not, by the next early ordinary conveyance.

Generally, in both foreign and inland bills, notice is given next day to the immediate endorser, and such endorser is allowed a day, when he should give fresh notice to those parties who are liable to him: without promptitude in giving notice, the drawer and the endorsers are discharged from their liability.

The absconding or absence of the drawer or endorser may excuse the neglect to advise him; and the sudden illness or death of the holder, or his agent, or other accident, will be an excuse for want of a regular notice to any of the parties, provided it has been given as soon as possible after the impediment was removed.

In case of bankruptcy, notice must be given to the assignees, and, if the party be dead, to the executor or administrator. If the party be abroad, notice may be left at his usual residence, and a demand of payment from his wife would, in such case, be regular.

In case of inland or foreign bills, notice by the post is sufficient; but the letter containing such notice should be delivered at the General Post Office, or, at least, at a receiving-house appointed by that office.

If the notice of dishonour be *posted* in due time by the holder, he is not prejudiced by any mistake or delay in the delivery of the Post Office. And it seems (16 *Mees. & W.* 124), the post-mark may be proved, either by a person from the office, or by others in the habit of receiving letters from that office.

Though there is no prescribed form of notice, yet it ought

to import what the bill is, that payment has been refused by the acceptor, and that the holder looks on the person to whom it is given as liable, and expects payment from him, 4 *B. & Cr.* 339.

Where the drawer of a bill draws upon *himself*, it may be deemed a promissory note, and the drawer is not entitled to notice of non-acceptance. The similarity of name and residence is evidence sufficient to warrant the jury in supposing the drawer and drawee to be the same person, *Roach v. Ostler*, *M. T.* 1827.

Upon the non-acceptance or non-payment of a bill, the holder should, in the case of a foreign bill, *protest it*; that is, the bill ought to be presented to the drawee by a public notary (to whom credit is due, because he is a public officer), and acceptance demanded. If the drawee refuse to accept the bill, then the notary should draw up a protest for non-acceptance; that is, a minute, comprising a notice of such refusal, and the declaration of the holder against sustaining any loss by such non-acceptance. Inland bills, it is now settled, need not be protested for non-acceptance.

To remove doubts, 2 & 3 W. 4, c. 98, enacts, that bills of exchange expressed to be paid in any place other than the residence of the drawer, if not accepted on presentment, may be protested in that place, unless the amount be paid to the holder on the day on which the bill would have become payable had the same been duly accepted.

Upon non-acceptance and notice, the holder may immediately *sue* the drawer and endorsers, without waiting till the bill becomes due according to the terms of it, 4 *East.* 481.

#### VII. ENDORSEMENT OF BILLS.

A bill payable to *order*, or to *bearer*, or containing any words to make it assignable, may be endorsed over, so as to give the endorsee a claim on all the antecedent parties whose names appear upon the bill. But, unless the operative words, "to order," or "to bearer," or some equivalent term, be inserted, it cannot be transferred so as to give the endorsee a claim on any of the antecedent parties, except the last endorser. It is not, however, essential to the *validity* of a bill that it should be transferable, or contain negotiable words to that effect.

An endorsement by pencil marks has been held sufficient, 5 *B. & C. R.* 235, but is very objectionable.

Bills are transferred either by delivery only, or by endorsement and delivery; bills payable to order are transferred by the latter mode only; but bills payable to bearer may be transferred by either.

On a transfer by *delivery*, the person making it ceases to be a

party to the bill; but, on a transfer by *endorsement*, he is, to all intents and purposes, chargeable as a new drawer.

A bill may be endorsed before it is complete, or after the time appointed for payment. In the first case, if a man endorse a blank stamped piece of paper, it will bind him to the amount of any sum which may be inserted, consistent with the stamp, and made payable at any date. If the endorsement be after the bill is due, it is incumbent on the endorsee to satisfy himself that the note is a good one; for, if he omit to do so, he takes it on the credit of the endorser, and must stand in place of the person who was holder at the time it became due.

No particular words are essential to the endorsement of a bill; the mere signature on the back of a bill is in general sufficient; such endorsement is called a *blank* endorsement.

A *full* or *special* endorsement mentions the name of the endorsee in whose favour it is made; as thus, "pay the contents to A. P. or order," and is subscribed with the name of the endorser. Such special endorsement precludes the person in whose favour it is made from making a *transfer*, so as to give a right of action against the special endorser, or any of the precedent parties to the bill, and from retaining a payment to their prejudice.

In taking any bill to account or discount, it is important well to examine and scrutinize all special endorsement. Lord Tenterden has decided, that a person who discounts a bill endorsed, "pay to A. P. or order, *for my use*," discounts it subject to the risk of having to pay the money to the special endorser, who so limited the application of the bill "*for my use*;" thus a party may be liable to pay the amount of the bill twice over, unless he previously ascertain that the payment has been made agreeably to the import of the endorsement.

After the payment of a part, a bill may be endorsed over for the residue.

A transfer by endorsement will convey no title, except against the person making it, unless it be made by him, who, for a valuable consideration, has a right to make the endorsement. So, in case of a bill lost by theft or accident, if it be only transferable by endorsement, the thief or finder cannot confer a title against the precedent parties; for, unless the endorsement be made by the person to whom the bill is payable, it is a forgery; but, if such bill be payable to *bearer*, and, therefore, assignable by mere delivery, the thief or finder may transfer a title against the precedent parties by transferring it. Therefore, an innocent holder, for a valuable consideration, may recover the amount of the bill, though the party from whom he took it, having no title, cannot.

But the holder of a bill that has been lost, or fraudulently or

feloniously obtained, must, if he sue for payment, prove he obtained it upon good consideration, 4 *Taunt.* 114.

In case of the *loss of a bill*, to entitle the party to recover, he should immediately give notice thereof to the acceptor and all the antecedent parties; and when the bill is transferable by mere delivery, should also give public notice of the loss; but even this will not avail, unless the notice be brought home to the knowledge of the party taking the bill.

The 9 & 10 W. 3, c. 17, enacts, that "if any inland bill be lost or missing within the time limited for its payment, the drawer shall, on sufficient security given to indemnify him, if such bill shall be found again, give another bill of the same tenor with the first." And, in all cases of the loss of a bill, a court of equity will, on sufficient security being given, enforce payment.

#### VIII. PRESENTMENT OF BILLS.

A party taking a bill, impliedly undertakes to present it to the proper person, at the proper place, and at the proper time for payment; and a neglect of any of these, on the part of the holder, or a failure to give notice of the non-payment of the bill, exonerates the drawer and endorsers from their liability.

Bills, however, payable *à usance*, or at a certain time after date or sight, or after demand, ought not to be presented for payment precisely at the expiration of the time mentioned in the bills, but at the expiration of what are termed *days of grace*. Three days' grace are usually allowed for payment; in case of excise bills, six days beyond the three are granted, if required by the acceptor. But, with bills payable on demand, or when no time of payment is expressed, no days of grace are allowed, but they are payable instantly on presentment.

On bank post bills no days of grace are claimed; but, on a bill payable at sight, the usual days of grace are allowed from the sight or demand.

Upon the last day of grace, and within a reasonable time before the expiration of that day, a bill must be presented for payment: such reasonable time at a banker's or merchant's counting-house in London would be prior to five o'clock; or at any other place presentation might be made as late as eight in the evening. If the last day of grace be Sunday, Christmas-day, Good Friday, or any public fast or thanksgiving day, the presentment must be on the preceding day; and if it be not then paid, the bill may be treated as dishonoured.

Bills and notes payable on the day preceding Good Friday, Christmas-day, or a fast or thanksgiving day, notice of the dishonour thereof may be given on the next day after; or if the two last fall on a Monday, presentment must be made on Satur-



day, although the notice of dishonour need not be given till Tuesday.

The bankruptcy, insolvency, or death of the acceptor, will not excuse the neglect to make presentment. In the first cases, the presentment should be made to the bankrupt, or to his assignees; and, in the latter, to the executor of the deceased; or, in case there be no executor, at the house of the deceased.

The days of grace allowed ought always to be computed according to the usage of the place where the bill is due. In Great Britain, Bergamo, and Vienna, *three* are allowed; at Frankfort, out of the fair time, *four*; at Leipsic, Nuremberg, and Augsburg, *five*; at Venice, Amsterdam, Rotterdam, and in Portugal, *six*; at Naples, *eight*; at Dantzic, Königsberg, and France, *ten*; at Hamburg and Stockholm, *twelve*; in Spain, *fourteen*; at Rome, *fifteen*; at Genoa, *thirty*; at Leghorn, Milan, and some other places in Italy, there is no fixed time. At Hamburg and in France the day on which the bill falls due makes one of the days of grace, but nowhere else.

USANCE, or the customary time for which a bill is usually drawn, also varies between different countries. An usance between this kingdom and Amsterdam, Hamburg, Paris, or any place in France, is *one month*; an usance between us and Spain is *two*; between Leghorn, Genoa, or Venice, *three*. A double usance is double the accustomed time; a half usance, half; and so on.

If the political state of the country, when the bill is due, render presentment for payment within due time impossible, presentment, as soon as possible, will entitle the holder to recover.

If a bill has a qualified acceptance, the presentment should be at the place mentioned in such qualified acceptance, otherwise the parties will be discharged from their responsibility.

The holders of *dishonoured bills and notes* having been frequently put to unnecessary expense by frivolous or fictitious defences, the 18 & 19 V. c. 67, provides that all actions on bills and notes commenced within six months after due may be by a writ of summons in a prescribed form, and the plaintiff, on filing affidavit of personal service, may at once sign final judgment. But defendant, upon application to judge, within twelve days, and showing a defence on the merits, and paying the sum endorsed on the writ into court, may have leave to appear, and judge under special circumstances set aside the judgment. Like remedies given for recovery of expenses incurred in the noting for non-acceptance or non-payment of dishonoured bill or note. Holder may issue one summons against all or any of the parties.

## IX. PAYMENT OF BILLS.

Payment should be made only to the holder of a bill, or some person properly authorized by him. By the custom of merchants, payment may be refused unless the holder produce and deliver up the bill, 4 *Taunt.* 602.

In all cases of payment of a bill, a receipt should be written on the back; and when a part is paid, the same should be acknowledged upon the bill, or the party paying may be liable to pay the amount a second time to a *bona fide* endorser.

The holder may bring actions against the acceptor, drawer, and all the endorsers, at the same time; but, though he may obtain judgment in all the actions, yet he can recover but one satisfaction for the value of the bill; but he may sue out executions against all the rest for the costs of their *separate* actions, *Bayley on Bills*, 43.

When a creditor directs his debtor to remit him, by post, the money due to him by a bill, or when it is the usual way of paying a debt, if the bill be lost, the debtor will be discharged; but when the defendant, in discharge of a debt which he owed to the plaintiff, delivered a letter, containing the bill which was lost, to a bellman in the street, it was decided that he was not discharged from the debt, because it was incumbent upon him to have delivered the letter at the General Post Office, or, at least, at a receiving-house appointed by that office.

## X. PROMISSORY NOTES.

A promissory note is defined to be a direct engagement, in writing, to pay a specified sum, within a limited time, or on demand, to a person therein named, or his order, or to bearer.

By the 3 & 4 Anne, c. 9, promissory notes are transferable, and in all respects so nearly assimilated to bills of exchange, that all the decisions and rules relative to one are, in general, applicable to the other. The chief distinction between them is that there are only two parties to a note, the drawer of a note standing in the place of the acceptor of the bill.

No formal set of words is necessary to the validity of a promissory note: nor is it essential it should contain any words rendering it negotiable. A note merely promising to account with another, or his order, for a certain sum, *value received*, is a valid promissory note, though it contains no formal promise to pay. The following is the usual form of this instrument:—

£100

London, February 25, 1834.

Two months after date I promise to pay Mr. Charles Strange or order, the sum of one hundred pounds, for value received.

GEORGE DORCAS.

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An instrument drawn so equivocally as to render it uncertain whether it be a bill of exchange or promissory note, may be treated as either against the drawer by the holder, *Edis v. Bury*, 1 B. & C. 433.

Under the act of Anne, a foreign note is negotiable in England by endorsement, *Moo. & Malk.*, 66.

A note beginning "I promise to pay," and signed by two or more persons, is a *several* as well as a *joint* note, and the parties may be sued jointly or separately: so, if the note begin "we jointly and severally promise to pay;" but when a promissory note is made by several, thus, "we promise to pay," it is a joint note only.

By 55 G. 3, c. 184, bankers who shall have issued promissory notes for payment to bearer on demand, of any sum not exceeding £100, may re-issue the same as often as they think proper. But notes *not* payable to bearer on demand are not re-issuable, under a penalty of £50, nor without an annual licence of £30.

It is only since the passing of the act, in 1797, restraining the Bank of England from paying their notes in specie, that promissory notes under £5 were allowed to circulate; the liberty to circulate such notes was, after several renewals, finally determined by 7 G. 4, c. 6; by which all promissory notes for less than £5 payable to the bearer on demand, issued by the Bank of England, or by any licensed English banker, were prohibited.

By 9 G. 4, c. 65, the circulation of Scotch or Irish notes for less than £5 in England or elsewhere is prohibited under penalty. No note for less than 20s. can be issued either in Ireland or Scotland, and the total issues of paper-money by the banks of both countries and in England are limited to their previous average circulation of notes by the acts of 1845.

*Drafts of Bankers.*—These provisions can only be established in England under the authority of letters patent, pursuant to 7 & 8 V. c. 113, which provides that every proposed banking firm shall, in their petition to the Privy Council, set forth the names and abodes of all the partners; the name and locality of bank, the amount of capital stock, not being less than £100,000, and the means by which it is to be raised; the amount paid up, and how invested; the proposed number of shares, and the amount of each share, not being less than £100. This petition to be referred to the Board of Trade, and on its report that the provisions of the act have been complied with, a charter will be granted.

The provisions of this act are extended by 9 & 10 V. c. 95, against the issue of small notes, and the limitation of the circulation of the banks has been sought to be contravened by some of the country bankers, who, to supply the deficiencies of their note circulation, issued drafts on London *payable to the order of parties in their own employ*, and which are retired on presen-

tation by the holders at the bank itself. The act under which these drafts were attempted to be issued, is the 9 G. 4, c. 23, which enacts, "That all persons carrying on the business of bankers, except within the city of London or three miles thereof, having first duly obtained a licence for that purpose, and given security by bond, may issue, on unstamped paper, promissory notes for any sum of money amounting to £5—payable on demand, or any period not exceeding seven days after sight, or twenty-one days after date; provided such bills be drawn upon any banker in London, Westminster, or the borough of Southwark; or bills drawn upon themselves at any place where they are licensed to issue such bills payable at any other place where they shall also be duly licensed." This enactment gives an undeniable right to bankers to issue drafts on their London agent, payable to order. The only question is, whether the issue of such drafts is not restrained by the 7 & 8 V. c. 32, s. 11, which enacts, "That from and after the passing of this act, it shall not be lawful for any banker to draw, accept, make, or issue, in England or Wales, any bill of exchange or promissory note, or engagement for the payment of money, *payable to bearer on demand*; or to borrow, owe, or take up, in England or Wales, any sum or sums of money on the bills or notes of such banker *payable to bearer on demand*; save and except that it shall be lawful for any banker who was then lawfully issuing, in England and Wales, his own bank-notes under the authority of a licence to that effect, to continue to issue such notes to the extent and under the conditions hereinafter mentioned."

Considering what was the object of this act, there seems little doubt that the courts would consider the issue by a bank, of drafts on London, on demand payable to the order of one of its own clerks, in addition to, and beyond the regularly-authorized issue of such bank, an infringement of the spirit and letter of the 7 & 8 V. c. 32. The observations of Lord Chief Justice Tindal, made in the case of the London Joint Stock Bank (*Booth v. the Bank of England*), are on this matter important. He there says, "It was a maxim of law, that what could not be done directly, could not be done indirectly; and therefore the nominal acceptance of George Pollard, of the bills drawn by the Canadian Bank, the payment of which was secured by the London Joint Stock Bank, was an indirect infringement of the privileges of the Bank of England."

*Regulations of Banks of Issue.*—After the passing of the 7 & 8 V. c. 32, no person other than a banker, who on the 6th of May, 1844, was lawfully issuing his own bank-notes, shall make or issue bank-notes in any part of the United Kingdom; nor shall any banker draw, accept, or issue any promissory note or engagement payable on demand, except in continuance of such

issue, from the said 6th of May, but the right of issue not to be affected by any change in the personal composition of a partnership; but any firm now consisting of not more than six persons may not issue notes after the number of partners shall exceed six. Bankers who from any cause shall cease to issue notes are not to be at liberty to resume such issue. Sections 13 to 29 contain the regulations under which banks of issue are to continue, and prescribe the accounts to be rendered by them, the amounts which they are to be authorized to issue, the manner of the publication of the returns, and other matters of detail.

*Caution.*—It is of great importance that bankers and others, taking bills or notes, should know something of the parties from whom they take them; otherwise, if the instrument turn out to have been lost or fraudulently obtained, they may be deprived of their security in an action by the owner, to recover possession. In *Snow v. Peacock*, C. J. Abbott said, "If a person take a bill, note, or any other kind of security, under circumstances which ought to excite suspicion in the mind of any reasonable man acquainted with the ordinary affairs of life, and which ought to put him on his guard to make the necessary inquiries, and he do not, then he loses the right of maintaining possession of the instrument against the rightful owner." The same point had been previously determined in *Gill v. Cubitt*, 3 B. & C. 466.

*Interest on Bills and Notes.*—By 2 & 3 V. c. 37, bills of exchange and promissory notes, not having more than twelve months to run, and any contract for a loan of money above the sum of ten pounds, are protected from the penalties of the usury laws. But the act does not give a claim in any court of law to more than the legal rate of five per cent. on any contract or engagement, unless it appear that a different rate of interest was agreed to between the parties.

*Joint Stock Banks.*—These banks refer to every company exceeding six persons who shall carry on the business of banking in Scotland or Ireland. But the act applies only to agreements or covenants of partnership entered into in Scotland and Ireland, on or after August 9, 1845. It does not preclude any creditor from any remedy competent to him before the passing of the act, August 26, 1846. Bank companies, of more than six persons, established since August 9, 1845, may carry on business till December 31, 1846, and in the interim apply for letters patent under the statute. See p. 137, as to re-election of directors.

#### XI. BANK OF ENGLAND NOTES.

These notes are payable on demand, and are treated as cash in the ordinary transactions of business. Being payable on demand, they cannot be recovered if lost by the legal owner, unless it can be brought home to the holder that they were obtained without a valuable consideration.

By 3 & 4 W. 4, c. 98, it is provided, that during the continuance of the privileges of the bank, no banking company of more than *six* persons shall issue notes payable on demand within London, or sixty miles thereof. But any company or *number of partners* may carry on the business of banking within these limits, provided they do not borrow or take up money on their notes in England, payable on demand, or at any time less than six months. All notes of the bank payable on demand, issued out of London, to be made payable at the place where issued. So long as the bank pays in legal coin, its notes are made a *legal tender*, except at the bank and the branch banks, for all sums above five pounds; the branch banks only liable to pay the notes they respectively issue; but the Bank of England in London is compellable to pay both the notes issued by the branches and parent establishment. An account of the bullion, securities, notes in circulation, and deposits of the bank, to be weekly transmitted to the Chancellor of the Exchequer; such account to be consolidated at the end of every month, and an average state of the bank accounts of the three preceding months to be published every month in the *Gazette*.

Under 7 & 8 V. c. 32, it is enacted, that after the 31st of August, 1844, the issue of promissory notes of the bank shall be kept distinct from the general banking business of the company, and be carried on separately as "the Issue Department of the Bank of England." From the same date the company are to set apart and appropriate securities to the value of fourteen million pounds to the issue department, of which the public debt to the company is to be deemed a part, and so much gold coin and gold and silver bullion as shall not be required by the banking department; thereupon an equal amount of bank-notes (including those in circulation) shall be transferred from the issue department to the banking department, and the whole amount shall be deemed to be issued on the credit of such securities, coin, and bullion. This amount may be diminished, but not increased, except in certain cases.

Section 3 declares, that the amount of silver bullion retained by the issue department shall not at any one time exceed a fourth part of the gold coin and bullion held at the same time. All persons may demand from the issue department notes for gold bullion at the rate of £3 17s. 9d. per oz. of standard gold.

## XII. BANKERS' NOTES AND CHEQUES.

Bankers' cash notes are promissory notes, payable to order, or bearer, on demand, and are transferable by delivery. They may, however, be negotiated by endorsement; in which case, the act of endorsing converts them into a bill of exchange. On account of being payable on demand, they are considered as

money; but, if presented in due time, and dishonoured, they will not amount to payment. At present, cash notes are seldom made, except by country bankers, their use having been superseded by the introduction of *cheques*.

A *cheque* is a draft or order on a banker by a person who has money in the bank; directing him to pay a certain sum of money to the bearer, or to a person named in the cheque, which is signed by the drawer. It is the essential characteristic of a cheque that it should be payable to the "bearer," and not specifically to any one person. Cheques are immediately payable on presentment. They are not subject to stamp-duty, and are therefore limited in their function to prevent their circulation as bills of exchange. They must, for example, be payable on demand to the bearer, and be drawn on a banker under fifteen miles of the place of issue. The place of issue, therefore, must be named, and they must bear date on the day of issue.

A *crossed cheque* is a cheque with the name of a particular banker written across the face of it, to whom for security it is payable, or it may be crossed simply "——— & Co.," leaving the holder to insert the name of the banker; in this case it is only paid through that banker. If presented by any other person, it is not paid without further inquiry. The judges in banco, in *Carlton v. Ireland* (Q. B., Jan., 1856), agreed that a crossed cheque continues a negotiable instrument payable "to bearer," and therefore, that a person receiving a cheque crossed to be paid by one bank may substitute the name of another: a person is not bound to be more circumspect in taking a crossed cheque than one not crossed; he can only be called upon to show that he took it *bonâ fide*, and gave proper value for it.

To amend and fix the law relating to crossed cheques, the 19 & 20 V. c. 25, enacts that in "every case where a draft on any banker made payable to bearer or to order on demand bears across its face an addition, in written or stamped letters, of the name of any banker, or of the words 'and Company,' in full or abbreviated, either of such additions shall have the force of a direction to the bankers upon whom such draft is made that the same is to be paid only to or through some banker, and the same shall be payable only to or through some banker." The word "banker" includes any person, corporation, or joint stock company, acting as such, s. 2.

A cheque is negotiable like a bill of exchange, and vests in the assignee the same right of action against the assignor in default of payment. But a creditor is not bound to take a cheque on a banker transmitted to him as payment of his debt, and he may commence an action for his debt while the cheque is yet in his hands, *Hough v. May*, N. & M. 535.

There is no settled rule for the presentment of a cheque for payment, further than that it must be within a reasonable time,

which, as observed by Lord Ellenborough, must be accommodated to other business and affairs of life, and the party is not bound to neglect every other transaction to present a cheque on the same day he receives it. But a banker, holding *sufficient funds* on account of his customer, is bound to pay his cheque within a reasonable time; and, if he fail so to do, he is liable to an action, 1 *B. & Adol.* 415.

The holder of a cheque on a banker is not bound to present it for payment till the day following that he receives it, 1 *N. & M.* 540; but it seems (9 *Man. & Gr.* 10061) that the time for presentment may be extended by the assent of the drawer, expressed or implied.

The drawer of a cheque continues liable, notwithstanding delay in the presentment of it, where things continue the same, and no damage has arisen from the delay, 9 *Ad. & E.* 52.

When the cheque is due on demand, and not payable at the place where received, it may be forwarded for payment by the next post.

Payment for a cheque before due is contrary to the usual course of business; and, therefore, when a banker paid a cheque a day before it bore date, which had been lost by the payee, he was liable to repay the amount to the loser, *Chitty on Bills*, 127.

When payment on a bill is made by the drawee giving a draft on a banker, it is not advisable to give up the bill till the draft is paid. If the holder of a draft on a banker receive payment thereof in the banker's notes instead of cash, and the banker fail, the drawer of the cheque will be discharged.

## CHAPTER VIII.

### *Award or Arbitration.*

AN award is the arbitration and judgment of one or more persons at the request of two parties, who are at variance, for ending the matter in dispute without the delay and expense of an action at law or a suit in equity. The act of reference is termed a *submission*; the party to whom the reference is made an *arbitrator*: when the reference is made to more than one arbitrator, with a proviso that, in case they shall disagree, another shall decide, that other is called an *umpire*.

Arbitrations are of two kinds; first, when there is a cause pending in court; and secondly, when there is no cause pending. The submission in the former case is either by rule of court or judge's order before the trial, or by the order of *nisi prius* at the trial. In the second case, the submission is by agreement of the parties; which is either in writing or by



parol, or by the positive direction of an act of parliament, as in the case of inclosure acts.

Experience having shown the utility of these references, especially in settling matters of account; in disputes between neighbours as to ancient lights and drains; cases between landlords and tenants upon dilapidations; matters of privacy arising between family connections; and executors' or trustees' accounts; all which are difficult and inconvenient to be adjusted in a court of law; it is enacted by 9 & 10 W. 3, c. 15, that those who desire to end any controversy, may agree that their submission of the suit to arbitration shall be made a rule of any court of record; and that, after such rule, the parties disobeying the award shall be liable to be punished for a contempt of the court, unless such award be set aside for corruption or misbehaviour, proved on oath, to the court, within one term after the award is made.

By 3 & 4 W. 4, c. 42, s. 39, when submission to arbitration has been by rule of court, it is not revocable by either party without leave of the court. The court may also order the attendance of any witness, or the production of any document, and disobedience thereto is deemed a contempt of court. Arbitrators are empowered to administer an oath, and witnesses giving false evidence are subject to the penalties of perjury.

The death of either of the parties submitting to an award, or of one of the arbitrators, vacates the submission, unless it contain a stipulation to the contrary.

When the submission fixes no time for the making of an award, it shall be understood to be within a convenient time; and if, in such case, the parties request the arbitrators to make an award, and they do not, a revocation afterwards will be no breach of the submission.

If upon the trial of any issue of fact under 17 & 18 V. c. 125, s. 6, it appear to the judge that the question arising involves matter of account which cannot be conveniently tried before him, he may order such matter of account to be referred to an arbitrator appointed by the parties, or to an officer of the court, or, in country causes, to a judge of any county court, upon such terms as to costs as the judge thinks reasonable. Application to set aside any award under reference must be made within seven days of the term next following the publication of the award to the parties, whether made in vacation or term, s. 11.

Every one whom the law supposes free, and capable of judging, may be an arbitrator or umpire; but an infant, a married woman, or a person attainted of treason or felony, is disqualified.

The nomination of the umpire is either made by the parties themselves, at the time of their submission, or left to the dis-

cretion of the arbitrators; and it is not unusual for the arbitrators to nominate the umpire before they proceed to consider the subject referred to them.

Time and place for investigating the matter being appointed, the parties must attend the arbitrators, either in person or by attorney, with their witnesses and documents. The arbitrators may also, if they think proper, examine the parties themselves, and call for any other information.

The arbitrators have a jurisdiction over the *costs* of the action, as well as over the matter in controversy; and in case of a reference at *nisi prius*, they may refer the costs to be taxed by the proper officer of the court, but by no one else.

As a reference to arbitration is in the nature of a trial, and as the award is the judgment, it ought to be final, certain, and conclusive, so as to leave nothing open to future dispute or litigation.

An award must be made in *writing*, signed and sealed by the arbitrators, and the execution properly witnessed: it may, however, be made by *parol*, if it is so expressly provided in the submission.

An award, in writing and under seal, need not have a deed stamp, unless delivered as a deed; but, being only delivered as an award, it is sufficient if it have the award stamp.

## CHAPTER IX.

### *Contracts.*

MR. COMYN defines a contract an agreement or mutual bargain between two contracting parties entered into either *verbally*, that is, by word of mouth only, or in *writing*. When reduced into writing, it is either subscribed with the hands and seals of both the contracting parties, or merely with one or both their signatures. Such contracts as are reduced into writing, under hand and seal, are technically called *deeds* or *specialties*; and those which are merely by *parol*, or in writing not under seal, are denominated *simple* contracts. The Statute of Frauds requires simple contracts to a certain amount, and under certain circumstances, in order to be valid, to be in *writing*; but, though written, they still continue, like all other contracts not under seal, to be considered simple contracts.

The contracts mostly in use in commercial affairs are simple or *parol* engagements. The chief legal distinctions between simple contracts and contracts by specialty, or deed, it will be proper to explain.

1. In support of an action on simple contract, the creditor must prove it was founded on a *sufficient consideration*, but in

a proceeding on a contract by deed, the want of consideration forms no defence to an action. 2. A deed is not affected by the Statute of Limitations, which renders any bill of exchange, promissory note, or other simple contract, void at the expiration of six years. 3. The obligation of a deed can only be avoided by a release *under seal*, and not by parol. 4. And lastly, as a special contract is considered a more deliberate and solemn engagement than by parol, the party bound thereby is not allowed to plead against any stipulation it contains, that it was executed with a different *intent* to what the terms of the deed itself import.

Having explained the relative obligations of *simple* and *special* contracts, the different subjects of sale and contract may be treated in the following order :—

1. *Sale and Conveyance of Estates.*
2. *Purchase and Sale of Goods.*
3. *Sale of Horses.*
4. *Sale or Return.*
5. *Hiring and Borrowing.*
6. *Warranty of Goods.*
7. *Bill of Sale.*
8. *Guarantee.*
9. *Stoppage in Transitu.*
10. *Contracts to Marry.*
11. *Avoidance of Contract.*
12. *Payment.*
13. *Stamping of Contracts.*

#### I. SALE AND CONVEYANCE OF ESTATES.

As a general principle, the law affords no redress for *oversights* committed in the purchase of estates, which might have been avoided by ordinary judgment and vigilance. But if the vendor, knowingly, conceal *latent* defects, either as regards the estate or its title, he cannot compel the execution of the contract, though the estate be sold expressly subject to all its faults.

A conveyance obtained for an inadequate consideration, from one not conscious of his right, by a person who had notice of such right, will be set aside, though no actual fraud is proved. But if there be no fraud in the transaction, mere inadequacy of price would not be deemed sufficient, even in equity, to vacate a contract, 10 *Ves.* 292.

If it be falsely asserted that a valuation has been made of an estate at a higher price than really was the case, the purchaser is not bound to complete the purchase, 3 *Atk.* 383. So if the particulars of the sale of a house describe it to be in good repair when it is not so, the purchaser need not fulfil the purchase,

unless there be time to complete the repairs before his right of possession commences. A false affirmation of the amount of rent would relieve the purchaser, 2 *Ray*. 1118.

From the moment of sale, the vendee becomes the virtual owner, and, consequently, from that time, entitled to any profit, or subject to any loss, which may subsequently accrue from the estate. And, on the other hand, the vendor is entitled to *interest* on the purchase money from the time of the bargain to that of payment, *Sug. Vend.* 479.

In trust estates, the purchaser is bound to see to the due application of the purchase money, according to the terms of the trust, unless expressly released from that obligation by the terms of the trust.

Various persons are disqualified from the purchase of estates; as trustees to preserve contingent remainders; agents, commissioners of bankrupts, assignees of bankrupts, solicitors to the commission, auctioneers, and, lastly, creditors who have been consulted as to the mode of sale.

Contracts for the sale or purchase of estates must be in writing, signed by the parties, and contain the terms of agreement, such as the consideration to be given, the property sold, and the names of the contractors. Where, however, the party resisting the fulfilment of the contract admits the agreement, or has acted fraudulently, equity will enforce the contract, though it be merely *verbal*.

In the session of 1845, important alterations were made in the law of real property, in the nature of the interests subsisting therein, and in the forms and mode of their conveyance. The details are legal and technical, but we shall endeavour to present the substance of the new statutes.

The 8 & 9 V. c. 106, enacts, that from October 1st, 1845, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold, be deemed to lie in grant as well as in livery; every deed to be chargeable with a stamp duty, the same as would have been chargeable for a lease or bargain and sale for a year. All feoffments (other than a feoffment made under a custom by an infant) and partitions, leases, assignments, and surrenders of any property not being copyhold, to be by deed. Such feoffments are not to operate by wrong, nor any exchanges or partitions to imply any condition in law, nor are the words "give" or "grant" in any deed to imply any condition beyond what it may legally express. Section 5 empowers any one to take an immediate estate or interest in any tenement or interest under an indenture, and any deed purporting to be an indenture is to take an effect as such. Contingent and other like interests, also rights of entry, whether immediate or future, are made alienable by deed, but no such disposition to defeat or enlarge an estate trust; and every such

disposition by married women is to be conformable to the 3 & 4 W. 4, c. 74, and 4 & 5 W. 4, c. 92. Married women may disclaim estates or interests by deed. A contingent remainder existing at any time after the 31st Dec. 1844, shall be, and if created before the passing of this act shall be deemed to have been, capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold, in the same manner, in all respects, as if such determination had not happened. When the reversion expectant on a lease, made either before or after the passing of this act, of any tenements or hereditaments, of any tenure, shall, after Oct. 1st, 1845, be surrendered or merge, the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such incidents to, and obligations on, the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the same lease.

The 8 & 9 V. c. 119, regulates the conveyance of real property. In the schedule to the act, two forms of conveyance are given; and the first section enacts, that the short form of about one hundred and fifty words shall be taken to have the same effect as the long one of more than ten times the length. Such deed to be held to convey all houses and buildings whatever, orchards, commons, trees, fences, ways, waters, privileges, and all appurtenances pertaining to the land therein comprised, together with the reversions or remainders, and all the estate both in law and equity of the grantor. The stamp-duty to be the same as on a lease or bargain and sale for a year. In taxing a bill for executing such a deed, the remuneration to have reference, not to the length of the deed, but to the skill and labour required and responsibility incurred.

The 8 & 9 V. c. 124, is almost identical with the preceding, substituting leases for deeds, and containing in two schedules the forms in which the leases are to be drawn up.

These acts do not extend to Scotland.

## II. PURCHASE AND SALE OF GOODS.

By the Statute of Frauds, 29 Car. 2, c. 3, no contract for the sale of goods to the value of £10 or upwards is valid, unless the buyer actually receive and accept part of the goods sold, or unless he give *something* by way of *earnest*, to bind the bargain, or in part of payment; or unless some note or memorandum in writing be made and signed by the party, or his agent, who is to be charged with the contract.

With regard to goods *under* the value of £10, no contract or agreement is binding, unless the goods are to be delivered *within*

a year, or unless the contract be made in writing, signed by the party or his agent.

The delivery of a penny or a glove is sufficient *earnest* within the statute: the acceptance of the key of the warehouse in which the goods are deposited; the payment of warehouse-rent; the directing them to be conveyed by a particular carrier; or the re-sale of them to a third person, are all an affirmance of the bargain.

The note or memorandum of a bargain for the price of £10 or upwards, must state the *price* for which the goods were sold, 5 B. & C. 583, T. T. 1826.

The provisions of the statute of frauds having been held not to extend to certain *executory contracts*, this defect is remedied by 9 G. 4, c. 14, by which it is provided, that the 29 Car. 2, c. 3, shall be extended to all contracts for the sale of goods of the value of £10 and upwards, notwithstanding the goods may be intended to be delivered at some *future time*, or may not at the time of such contract, be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Where no act remains to be done by the vendor, as counting, weighing, or measuring, the moment the bargain is struck the property of the goods is vested in the vendee, and remains at his risk. So, if a horse die in the *interval* of sale and delivery, the conditions of the statute having been complied with, the vendor is entitled to his money, though no actual change of property has taken place.

In some cases property may be transferred by sale, though the vendor have none at all in the goods. The general rule of law is, that all sales and contracts for anything vendible in fairs or open market, not only bind the parties, but all those having any right or property therein. Open market in the country is only held in certain towns, in a particular spot, and on special days, by charter or prescription. But, in London, every day, except Sunday, is market-day, and every shop in which goods are publicly exposed to sale is open market, for such goods only as the owner professes to trade in. Pawnbrokers, in London, and within two miles thereof, are exempt from this protection; and any goods wrongfully taken to them may be claimed by the owner.

By the Mercantile Law Amendment Act, the 19 & 20 V. c. 97, no writ of *fiery facias* or other writ of execution, and no writ of attachment against the goods of a debtor, will prejudice the title to such goods acquired by any person *bonâ fide*, and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ; provided the party had no

notice of the writ or attachment having been delivered to, and remained unexecuted in the hands of the sheriff.

### III. SALE OF HORSES.

The property in horses is not easily altered by sale, without the express consent of the owner; for a purchaser gains no property in a horse that has been *stolen*, unless it has been bought in a *fair* or *open* market, according to the directions of the statutes. By 2 & 3 Ph. & M. c. 7, and 31 Eliz. c. 12, the keeper of every fair or market is bound to appoint a certain open place for the sale of horses, and one or more persons to take toll there, and keep the place from ten in the forenoon till sunset. The owner's property in the horse *stolen* is not altered by sale in a fair, unless it be *openly* ridden, led, walked, or kept standing for one hour at least, and has been registered, for which the buyer pays 1*d.* Sellers of horses in fairs or markets must be known to the toll-taker, or other person, who will testify his knowledge of them, which is registered. Sales made otherwise are void. The owner of a horse stolen, notwithstanding the *legal sale*, may redeem the same on the payment or tender of the price within six months after it is stolen.

A warranty of *soundness* in a horse may be defined, in an enlarged sense, an assurance from constitutional defects; but in its practical import, is construed so as to exclude every defect by which the animal is rendered less fit for present use and enjoyment. 1 *Stark.* 127. A defect arising from a temporary injury capable of being speedily cured, and not interfering with such enjoyment,—the horse is not, on that account, to be held *unsound*; still less if the purchaser be informed of it, and admits the exception into the terms of the contract, 2 *Esp.* 673.

With respect to *exchanges*, there is no difference between sales and exchanges, but a delivery on one or both sides is essential to establish the contract, 3 *Salk.* 147.

The agreement for the sale of horses has been held to be an agreement "relating to the sale of goods" within the Statute of Frauds; therefore, a written receipt for the price, containing the warranty, or other condition of sale, is admissible in evidence, stamped as a common receipt-stamp, without an agreement-stamp, and is the usual mode in which the contract is made and proved, *Skrine v. Elmore*, 2 *Champ.* 407.

### IV. SALE OR RETURN.

When goods are sold upon *sale or return*, no absolute property is vested in the conditional vendee; and the sale of them contrary to the price or terms agreed upon, subjects him to action.

But though, while the goods remain unsold in the hands of such conditional vendee, no absolute property vests in him, yet, under the 6 G. 4, c. 16, s. 72, they would doubtless pass to the assignees as goods in his possession, order, or disposal; nor would any agreement between the parties protect the goods from the operation of the statute.

#### V. HIRING AND BORROWING.

These are contracts by which a qualified property is transferred to the *hirer* or *borrower*; the difference is, that *hiring* is always for a price or recompense; *borrowing* is merely gratuitous. In both cases the law is the same. They are both contracts whereby a transient property is transferred, for a particular time, or use, on condition of restoring the goods so hired or borrowed, as soon as the time is expired, or use performed, together with the price or recompense (in case of hiring), either expressly stipulated or left to be implied by law, according to the value of the service. Thus, if a man hire or borrow a horse for a month, he has a qualified property therein during that period; on the expiration of which, his qualified property determines, and the owner becomes, in case of hiring, entitled to the price for which the horse was hired.

In all cases of hiring and borrowing, there is an implied condition that the thing hired or borrowed shall not be abused or improperly treated, so that it may be returned in as good condition as it was received.

#### VI. WARRANTY OF GOODS.

In all cases of *express* warranty, if the warranty prove false, or the goods are in any respect different from what the vendor represents them to be, the buyer is entitled to compensation, or he may return them. But a *general* warranty does not extend to guard against defects which are obvious to ordinary circumspection, or where the false representation of the vendor is known to the vendee; as if a horse with a *visible* defect be warranted perfect, or the like, the vendee has no remedy.

Neither does the law, upon a sale of goods by sample, with a warranty that the bulk of the commodity answers the sample, raise an implied warranty that the commodity should be marketable; therefore, if there be a latent defect then existing in them, *unknown* to the seller, and without fraud on his part, he is not answerable.

But a sale of goods by sample is such a warranty that, if the bulk be inferior to the sample, the purchaser is not bound to accept or pay for the goods.

Warranty must be upon the sale; if it be made after, it must



be reduced to writing, otherwise it will not be binding on the vendor.

#### VII. BILL OF SALE.

This is a contract, under hand and seal, whereby a man transfers the interest he has in goods to another; such an instrument is binding against the party who executes it, whether it were for valuable consideration or not; but it may be fraudulent and void against creditors, and in some cases an act of bankruptcy.

When judgment has been obtained for any debt or damage, all contracts for the sale or purchase of goods, though for a valuable consideration, are void from the delivery of the writ to the sheriff; and those persons obtaining such judgment have a lien upon the property of him against whom it is given, so as to defeat any intermediate disposition of it between the delivery of the writ and the execution of the judgment. A *bond fide* sale of goods in open market, to an innocent vendee, without notice of the execution, is not, however, subject to the lien of a third person, under the judgment. So a bill of sale of goods made for a valuable consideration, with the knowledge and consent of the creditors, is valid against them, though unaccompanied with possession.

A bill of sale is sometimes given with a condition for resuming the goods at a certain period on repayment of the money advanced; but it is a dangerous method of obtaining accommodation, and should be cautiously adopted.

The transactions to which bills of sale are most applicable are, sales of fixtures, and furniture in a house; of the stock of a shop; of the good-will of a business; of an office, or the like. But their most important use is in the transfer of property in ships, which being held in shares, cannot, in general, be delivered over on each change of part ownership.

Frauds are frequently committed upon creditors by *secret bills of sale of personal chattels*, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors. For the remedy of such collusive practices, the 17 & 18 V. c. 30, enacts that every bill of sale shall be void, unless the same, or a copy thereof, and of every schedule annexed, attestation of execution, together with an affidavit of the time of making, and a description of the residence and occupation of the person giving the same, be filed within twenty-one days after the making of such bill, with the clerk of the docquets, and judgments in the Court of Queen's Bench, in like manner as a warrant of

attorney in any personal action given by a trader is now required to be filed.

By s. 2, in every bill of sale, if subject to any defeasance, condition, or declaration of trust, the same must be written on the same paper or parchment as the bill of sale. Officer of court to keep a book containing particulars of each bill of sale, and a search to be permitted on the payment of 1s. Officer entitled to a fee of 1s. for filing bill of sale, and to account for the same. Office copies or extracts to be given on paying as for copies of judgments, ss. 3, 4.

#### VIII. GUARANTEE.

A guarantee is an undertaking to answer for the failure or default of another. The Statute of Frauds provides that no person shall be liable on any special promise to answer for the debt, default, or miscarriage of another person, unless a written agreement, or some memorandum in writing for such promise, shall be signed by the party making the promise, or some other person lawfully authorized by him for the purpose. In the construction of a guarantee, it is a general rule the surety shall not be bound beyond the extent of the express words of the engagement into which he has entered.

By the 19 & 20 V. c. 97, no special promise made to answer for the debt, default, or miscarriage of another is deemed invalid to support an action, by reason that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

By the new act, the *Mercantile Law Amendment*, s. 4, the promise or guarantee to or for a *firm* will cease upon a change in the members of a firm, unless it appear to be the intention of the parties that, by express stipulation or implication, the guarantee shall be binding notwithstanding the change in the firm.

By s. 5, every person who is surety for the debt or duty of another, who discharges his liability, is entitled to the assignment of all securities held by creditors.

#### IX. STOPPAGE IN TRANSITU.

When goods have been consigned upon credit, and the consignee has become a bankrupt or insolvent before the delivery of the goods, the law, in order to prevent the loss that would happen to the consignor by the delivery of them, permits him, in many cases, to resume the possession, by countermanding the delivery, and before or at their arrival at the place of destination, to cause them to be delivered to himself or agent. The exercise of this right is termed a *stoppage in transitu*, or *in passage*, and embraces two principal considerations:—1. The

circumstances under which goods are deemed to be *in transitu*.  
 2. By whom this right may be exercised.

With respect to the *first* consideration, it is a general rule that the passage of goods continues in all cases till there has been an actual delivery to the vendee; therefore, goods continue liable to the vendor's right of stoppage, not only while they remain in possession of the carrier, whether by land or water, but also in any place connected with the transmission and delivery of them to the consignee. So, if goods consigned are delivered to a wharfinger or packer, and he receive them on the part of the vendee, to be forwarded to him accordingly, on the insolvency of the vendee they are subject to be stopped by the consignor in the hands of the wharfinger or packer, even though the latter should have been appointed by the vendee.

The payment of part price of the goods does not affect the vendor's right of stoppage, for part payment only diminishes the vendor's lien to that amount on the goods detained. But where part of the goods sold by an entire contract has come into actual possession, the vendor's right to countermand is wholly at an end, and cannot be exercised over the residue, which may not have been delivered, 2 *Hen. Bl.* 504. Neither has the vendor any right of stoppage, if the vendee has exercised any act of ownership over them; as by tasting, sampling, paying warehouse rent, though at a place short of their ultimate destination, 4 *Esp.* 82. Even if, after goods are sold, they remain in the warehouse of the vendor, and he receive warehouse rent for them, this amounts to such a delivery of the goods to the vendee, as to put an end to the vendor's right to stop *in transitu*.

2. *By whom the right of stoppage may be exercised.*

This right can only be exercised where the relation of a vendor and vendee subsists between the consignor and consignee; it does not belong to a person who has only a *lien* upon the goods without any property in them. A carrier, to whom the balance of a general account is due, can only detain for the carriage of the particular goods in his possession. Nor is a mere surety of the price of the goods such a vendor as can exercise the right of stoppage *in transitu*, even though he may be entitled to a commission on the amount of the goods for which he may have been security. But where a correspondent abroad, in pursuance of orders from a merchant in this country, purchases goods on *his* own credit, and merely takes a commission on the price, in case of the insolvency of the consignee, he is considered the vendor for stopping the goods *in transitu*: for there is no privity between the original owner and the insolvent.

It is not necessary that the vendor, to exercise the right of stoppage, should *actually* take possession of the property consigned by corporal touch; he may put in his claim to the goods *in transitu* either verbally or in writing, and it will be equiva-

lent in law to an actual stoppage, provided it be made before the transit has expired.

#### X. CONTRACTS TO MARRY.

If a man and woman, being unmarried, mutually promise to marry each other, but afterwards one of the parties marry another person, an action will lie for the breach of the contract.

If an infant and person of *full age* mutually promise to marry, the infant, though not bound by the promise, may, notwithstanding, maintain an action for breach of promise by the adult.

A promise by a man to pay a woman a sum of money if he shall marry anybody else, is considered as a *restraint of marriage*, and therefore void. So, in the case of *Hartley v. Rice*, which was an action upon a wagering contract for fifty guineas, that the plaintiff would not marry within six years, this was held to be in restraint of marriage, and therefore void; no circumstance appearing to show that such restraint was prudent and proper in the particular case.

The Statute of Frauds does not require that mutual promises to marry should be in writing. But a parol agreement to pay money, or make a settlement in *consideration of marriage*, if not reduced to writing, is void.

#### XI. AVOIDANCE OF CONTRACT.

After bargain for the sale of goods, if the vendee does not come and pay for them, and take them away in a reasonable time after request, the vendor may elect to consider the contract rescinded, and re-sell the goods.

Generally, if either vendor or vendee neglect to fulfil the conditions of the sale, the other is at liberty to avoid the bargain.

A contract for the sale of goods may also be avoided by the *Statute of Limitations*, the 21 Jac. c. 16, which fixes the period of six years as the term beyond which a plaintiff cannot lay his cause of action. The general provisions of this act have been stated at page 41; we shall only here observe, the courts have manifested great repugnance to a plea under this act, and it is held the statute does not extinguish the *right of action*, but only suspends the remedy, and this suspension is removed by a subsequent promise or engagement. But by 9 G. 4, c. 14, for a subsequent promise to be binding, and to take the case out of the statute, it is necessary the promise should be *in writing*, signed by the party chargeable therewith.

From the Statute of Limitations are excepted all persons under age, married women, persons insane, in prison, or abroad; and the limitations of the statute commence only from the time

when their respective impediments or disabilities have been removed.

Although a good and sufficient consideration is necessary to the validity of a simple contract, yet a contract may be avoided when founded on a legal consideration, if the execution of the engagement involve the violation of any public law or statute. Thus a contract could not be enforced which is contrary to the act for the prevention of stock-jobbing, or in violation of the stamp, excise, or navigation laws. Neither could an action be sustained on a contract contrary to public morals, though a consideration has been given or received. Therefore the value of prints on obscene and immoral subjects is not recoverable, 4 *Esp.* 27. Nor could the value of articles of dress, or of board and lodging furnished to a prostitute to enable her to follow her vocation, be recovered, 1 *Camp.* 358.

## XII. PAYMENT.

In some branches of trade, custom has established a general usage as to the period of credit upon sales of goods, and, where no specific stipulation is made to the contrary, this customary credit is as much a part of the contract as if expressly agreed upon; the law implying that all persons deal according to the general usage, unless the contrary appear.

Where no such usage prevails, and no time of payment is specified in the contract of sale, the money is demandable immediately upon the delivery of the goods.

If the vendor stipulate to deliver certain goods within a limited time, he cannot demand payment till the *whole* of the goods are delivered.

A person contracting to deliver a certain quantity of goods, and failing to deliver the *whole* quantity agreed upon, may recover for the part delivered and accepted by the buyer. The buyer can only be exonerated from payment by refusing to *accept a part*; for, if he accept and take the benefit of part, no protest, at the time of acceptance, will relieve him from liability of payment, *Oxenden v. Wetherell*, Easter Term, 1829.

With respect to *interest*, it is determined that interest is not allowable on a demand for goods sold and delivered, unless where there is a specific agreement for that purpose; as by a bill of exchange, promissory note, or an express promise to pay interest; then the vendor is entitled to interest from the time specified.

So, when, from the usage of a particular trade, the intention of the parties that a book-debt shall bear interest, can be collected, interest will be allowed.

By 9 G. 4, c. 14, s. 3, no endorsement or memorandum of any payment, upon any promissory note, bill, or other writing, by the

party to whom the payment is made, shall be deemed sufficient proof of such payment, so as to take the case out of the Statute of Limitations.

### XIII. STAMPING OF CONTRACTS.

A written instrument which requires a stamp cannot be admitted in evidence unless it be *duly stamped*; and no parol evidence will be received of its contents. If, therefore, the instrument produced is the only *legal* proof of the transaction, and that cannot be admitted for want of a proper stamp, the transaction cannot be proved at all. But it may happen, in a variety of cases, that the transaction is capable of being proved by other evidence, beside the written instrument; and the objection arising from the Stamp Act may be avoided by resorting to that other species of proof.

It appears, however, from a decision in the Exchequer, that a *deed* may be valid without a stamp of the proper denomination, provided it has a stamp proportioned to the consideration *expressed* in the deed; and though that consideration proved not to be the true one, 13 *Price*, 455, *L. T.* 1824. But, on the other hand, persons are liable to a heavy penalty in not setting forth the *full* purchase or consideration money.

The Common Law Procedure Act of 1854; the 17 & 18 V. c. 125, makes provision for stamping documents at the trial of a cause. By s. 28, upon the production of any document as evidence, it is made the duty of the officer of the court, whose duty it is to read such document, to call the attention of the judge to any omission or insufficiency of the stamp; and the document, if unstamped, or not sufficiently stamped, will not be received in evidence, unless the whole, or the deficiency of the stamp duty and the penalty required by statute, and an additional £1, be paid.

## CHAPTER X.

### *Assumpsit.*

ASSUMPSIT, from the Latin *assumo*, is an *implied* contract, by which a man assumes or takes upon him to perform or pay anything to another, and to which he is bound upon the principles of equity and the just construction of law.

1. If I employ a person to transact any business for me, or perform any work, the law implies that I undertook or assumed to pay him so much as his labour deserved. And if I neglect to make him amends, he has a remedy for this injury, by bringing his action on the case; in which he is at liberty to suggest that

I promised to pay him so much as he reasonably deserved, and then to aver that his trouble was really worth such a sum, which valuation is submitted to the determination of a jury.

2. If one take up goods or wares of a tradesman, without expressly agreeing for the price, there is an implied understanding that the real value of the goods shall be paid, and an action may be brought accordingly.

3. Another implied undertaking is, when one has received money belonging to another, without a consideration given on the receiver's part; for the law construes the money received for the use of the owner only, and implies that the person so receiving it undertook to account for it to the owner. And if he unjustly detain it, an action lies against him, and damages may be recovered. This is an extensive and beneficial remedy, applicable almost to every case where a defendant has received what, in equity and fairness, he ought to refund. It lies for money paid by mistake, or on a consideration which happens to fail, or through imposition, extortion, or oppression, or where any undue advantage is taken of the plaintiff's situation.

4. When a person has laid out and expended his own money for the use of another, at his request, the law implies a promise of repayment, and an action will lie on this undertaking. On this principle it is established that a surety in a bond, who pays the debt of his principal, may recover it by action on the assumpsit, for so much advanced for the use of the principal. But an action will not lie for money paid, when the money has been paid *against the express* consent of the party for whose use it is supposed to have been paid. Neither can money be recovered back when paid for carrying on an *unlawful* undertaking, as an unlicensed theatre, 10 *Bing.* 107.

5. Upon a stated account between two merchants or other persons, the law implies that he against whom the balance appears has engaged to pay it to the other, though there be not any actual promise. Actions, however, to compel a person to bring in and settle his account are now seldom used; the most effectual way to settle these matters is to file a bill in equity, when a discovery may be had on the *defendant's oath* without relying merely on the evidence which the plaintiff may be able to produce; though, when an account is once settled, nothing is more common than an action on the assumpsit to pay the balance.

6. The last class of implied contracts arises upon the supposition that every one who undertakes any office, employment, trust, or duty, contracts, with those who employ or entrust him, to perform it with integrity, diligence, and skill. And if, by the want of either of these qualities, any injury accrues to individuals, they have their remedy and damages by a special action on the case. A few instances will suffice.

If a public officer be guilty of neglect of duty, or a sheriff or jailor suffer a prisoner in custody for debt to escape, or if an attorney betray or wilfully neglect the cause of his client, he is liable for damages.

With an innkeeper, there is an implied contract to secure his guest's goods in his inn; with a common carrier, to be answerable for the goods he carries; with a common farrier, that he shoes a horse well, without laming him; with a tailor, shoemaker, or other workman, that he performs his business in a workmanlike manner; in which, if they fail, an action on the case lies to recover damages for such breach of their general undertakings. So, too, a surveyor being employed to survey and value premises, upon the security of which money is about to be advanced; if he, through ignorance or negligence, represent the value of the security greater than it is, by which his employer is deceived, he is liable to an action for damages.

But if a person be employed to perform any of these offices, whose common profession or business it is not, the law implies no such general undertaking: in order to charge *him* with damages, a special agreement is necessary.

If any one cheat me with false cards or dice, or by false weights and measures, or by selling me one commodity for another, an action lies for damages upon the contract; since the law implies that every transaction ought to be fair and honest.

In contracts, likewise, in sales, it is constantly understood that the seller undertakes that the commodity is his own. In contracts for provisions, it is implied that they are *wholesome*; otherwise, in either case, an action lies for damages.

## CHAPTER XI.

### *Merchant-Shipping and Navigation.*

1. *Navigation Laws.*
2. *Board of Trade, Ownership, Registry.*
3. *Charter-Party.*
4. *Bill of Lading.*
5. *Freight.*
6. *Bottomry and Respondentia.*
7. *Average.*
8. *Passenger Steamers.*
9. *Wreck and Salvage.*
10. *Pilotage.*

#### I. NAVIGATION LAWS.

THE general aim of these laws has been to encourage British shipping, by securing the carrying trade of the country, both



foreign and coastwise, to British-built ships, owned and navigated by British subjects. They are of ancient date; but the policy of them was most directly resorted to and matured to counteract the maritime ascendancy of the Dutch, by the famous statute of the Long Parliament in 1651, afterwards confirmed in 1660 by the Navigation Act of 12 Car. 2, c. 18. In this act it is provided that no merchandize, either of Asia, Africa, or America, shall be imported into England except in British-built ships, navigated by an English commander, and manned to the extent of three-fourths of the crew by Englishmen; and that certain enumerated articles of European merchandize, embracing all the bulky and chief products of the Continent, as well as all Turkish and Russian goods, should not be imported in foreign ships, except such as should be brought directly from the country or place of growth, or manufacture, in ships belonging to such country or place. Besides these exclusive privileges granted to English shipping, the object intended was farther sought to be gained by the imposition of *discriminative duties*, so that the enumerated goods which might be imported in foreign ships in Europe were, in that case, more highly taxed than if imported in our own vessels.

A policy so selfish could hardly fail to encourage, if not to provoke, imitation; and the North Americans, after achieving their independence, promptly followed the example of the mother country, by passing a *Navigation Act*. But experience soon showed that a Navigation Act, if a national benefit at all, is only one-sided, and that two conflicting acts are mutually detrimental; compelling the ships respectively of the competing States in the out-going voyage to sail in ballast. Negotiations ensued, and a treaty was concluded in 1815, guaranteed by an act of parliament, which, for the first time, allowed of a deviation from the strictness of our protective enactments. By this treaty the ships of the two countries were placed reciprocally on the same footing in the ports of England and the United States, and all discriminative duties chargeable upon the goods thus conveyed were mutually repealed.

A few years later, further modifications of our exclusive system had become unavoidable, and five acts were passed, the 3 G. 4, c. 41 to c. 46, which greatly mitigated our shipping laws. From various causes, foreign countries had up to this time generally submitted to the discriminative duties imposed upon their vessels in our ports without retaliation. But it now appeared that the imposition of preference duties was a game that two or more States might play at, and that the forbearance of our neighbours was no longer to be calculated upon. In 1823 Prussia notified that, until an alteration of our system was made in favour of her vessels, similar heavy duties would be imposed upon British ships that should enter any of her ports; and it

was observed that a corresponding movement would have been followed in other countries. Our merchants, in consequence, became anxious for the removal of the English discriminative duties; and with this view the Reciprocity Acts, the 4 G. 4, c. 79, and 5 G. 4, c. 1, were passed. These statutes authorised the Crown to permit the importation and exportation of commodities in foreign vessels, at the same duties as were chargeable on British vessels, in favour of all such countries as should not levy discriminative duties on British vessels. Under these acts reciprocity treaties were concluded with the chief German States, with the States of South America, and with France, Austria, Holland, and Greece.

From this legislative retrospect it is manifest, that whatever might be the primary policy of the Navigation Laws, or their influence on the maritime progress of the country, the relaxation of them had become expedient to avert a hurtful retaliatory course in other nations. As the greatest of commercial countries, as having more ships to employ, and more commodities to exchange, England doubtless appeared more than any other country interested in their peaceable and unrestricted intercourse. By these comprehensive views the Legislature seems to have been influenced in the gradual abandonment of the Navigation Laws, especially by the acts by which British ships were required to be manned by a certain proportion of British seamen, and by the opening of the coasting trade to foreign vessels.

It is by 16 & 17 V. c. 131, s. 31, that so much of a former act as requires every British ship to be navigated by a master who is a British subject, and the whole or a certain proportion of her crew are British seamen, is repealed.

By 16 & 17 V. c. 107, no goods or passengers can be carried coastwise from one port of the United Kingdom to another, nor to or from the Isle of Man, or the Channel Islands, except in *British ships*. These restrictive enactments on foreign vessels are repealed by 17 V. c. 5, subject to the Customs' Act, 1853, and the retention by the queen of the right to exercise retaliatory restrictions. Foreign ships in the coasting trade to be subject to the same regulations as British ships; likewise foreign steam-vessels carrying passengers.

## II. BOARD OF TRADE, OWNERSHIP, REGISTRY.

By the 17 & 18 V. c. 104, the Board of Trade has the general superintendence of matters relative to the mercantile marine, assisted by Local Marine Boards, the members of which are to be elected by the shipowners. Examinations to be instituted into the qualifications of masters and mates of foreign-going ships, and certificates of competency granted to those who pass.

If any local board fail to discharge its duties, the Board of Trade may assume its duties, or direct a new election. If a master or mate be convicted of felony, the Board of Trade may cancel his certificate of competency or service; or if upon inquiry he has been found guilty of gross or repeated acts of dishonesty, drunkenness, or tyranny, certificate may be suspended or cancelled. Certificate of master or mate may be appropriate to station of holder or a superior grade. Local Marine Board to establish a shipping-office, and appoint superintendents of such office, to be called shipping-masters, with any necessary deputies, clerks, and servants, and regulate the mode of conducting business at such office, and have complete control over the same. Every act done by any deputy shall have the same effect as if done by a shipping-master, s. 122.

*Ownership of British Ships.*—No ship deemed to be a *British* ship, unless belonging wholly to owners of the following description:—1. Natural-born British subjects, who have not taken an oath of allegiance to a foreign State. 2. Persons made denizens or naturalized by act of parliament. 3. Bodies corporate, having their principal place of business in the United Kingdom, or some British possession.

No owner of any sea-going ship is liable to make good any loss or damage that may happen without his actual fault or privity of or to any of the following things, that is to say—of or to any goods whatsoever taken in or put on board any such ship, by reason of any fire happening on board such ship; or to any gold, silver, diamonds, watches, jewels, or precious stones, taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with or secreting thereof, unless the owner or shipper has, at the time of shipping the same, inserted in his bills of lading or otherwise declared in writing to the master or owner of such ship the true nature and value of such articles, s. 503. Owner not liable where all or any of the following events occur without his actual fault or privity: where any loss of life or personal injury is caused to any person being carried in such ship; where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship; where any loss of life or personal injury is, by reason of the improper navigation of such ship, caused to any person carried in any other ship or boat.

Every British ship must be registered, and the certificate of registry comprise the name of the ship, and of the port to which she belongs; the details as to her tonnage, build, and description; the name of her master; particulars as to her origin as stated in the declaration of ownership; the name and description of her registered owner, and if there is more than one such owner, the proportions in which they are respectively interested. Whenever any change takes place in the registered

ownership of any ship, then the master must forthwith deliver the certificate of registry to the registrar, and he shall indorse thereon a memorandum of such change. Every person may, upon payment of a fee not exceeding one shilling, have access to the register-book for the purpose of inspection at any reasonable time during the hours of official attendance of the registrar.

*National Character.*—No officer of customs shall grant a clearance or *transire* for any ship until the master of such ship has declared to such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance; and if any ship attempts to proceed to sea without such clearance, any such officer may detain her until such declaration is made. If any person uses the *British* flag and assumes the *British* national character on board any ship owned in whole or in part by any person not entitled by law to own *British* ships, for the purpose of making such ship appear to be a *British* ship, such ship shall be forfeited to her majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right; or in any proceeding for enforcing any such forfeiture the burden of proving a title to use the *British* flag, and assume the *British* national character, shall lie upon the person using and assuming the same, s. 102.

See *Mercantile Marine Act*, on Passenger Steamers and Pilotage.

### III. CHARTER-PARTY.

A charter-party is a contract for the letting the whole or part of a ship to a merchant, called the freighter or charterer, for the conveyance of goods for one or more voyages. It may be under seal or in writing only; or a memorandum of a charter-party, or heads of an agreement for the formation of one, are as common between the shipowner and freighter as charter-parties, and are equally binding as if a more formal instrument had been executed.

The usual stipulations of a charter-party on the part of the owner or master are, that the ship shall be seaworthy, and in a condition to carry the goods; that she shall be ready by the day appointed to receive the cargo; that, after receiving her lading, she shall sail on the first opportunity, and safely deliver her goods at the place of consignment. The chief undertaking of the freighter is to pay the freight, and load and unload the ship within the time agreed upon. Each party, in conclusion, binds himself by a penalty to the full performance of the covenants respectively stipulated.

A charter-party takes effect from the day of its execution or

delivery, not from the day of its date, unless the contrary is expressly stipulated.

The freighter may underlet, if not prohibited by the terms of the contract, or may put in another person's goods. The owner is not liable for other than gross neglect in the captain or master, who is for all legal purposes his agent; and his responsibility as carrier commences on the receipt of the merchandise on board.

The freighter generally insures.

#### IV. BILL OF LADING.

This is an acknowledgment by the master of the shipment of the goods therein enumerated on board his ship, and is a written evidence of the agreement for their carriage and delivery, agreeably to the order or consignment of the shipper. It is distinguished from a charter-party, inasmuch as the charter-party only states the terms and conditions of the freightage or carriage: whereas the bill of lading usually states the quantity, condition, and marks of the merchandise, the names of the shipper, consignee, and master, and the places of departure and destination.

On the receipt of the goods the master or his deputy merely gives a memorandum of their delivery on board, and afterwards signs two or three bills of lading; one of which is kept by the shipper; a second is transmitted to his agent abroad; and a third, which is made out on unstamped paper, is given to the master of the vessel for his guidance.

A bill of lading is transferable by the endorsement of the shipper; and such endorsement and delivery thereof convey the whole property in the goods shipped to the endorsee for a valuable consideration. The transfer or endorsement of a bill of lading by an agent or factor, is, while he acts within the limits of his implied commission, a conclusive sale against his principal. He may even pledge or deposit the instrument as security for an advance, and the principal is bound, if the person making the advance receives no previous intimation that the person so entrusted is not the owner of the goods or merchandise.

Endorsements of a bill of lading may be *general* or *special*. The former does not name the consignee, but imparts a general direction to the master to deliver the goods to the person who holds the bill of lading at the place of consignment. A *general* endorsement is used when the shipper is doubtful of the solvency of the consignee, and that he may, by this precaution, have it in his power to vary the consignment. A *special* endorsement expresses the name of the consignee.

As a bill of lading is transferable by endorsement, the master is warranted in delivering the goods to the holder of the instru-

ment, unless it is presented under unusual or suspicious circumstances.

Some of these anomalies in respect of a bill of lading are remedied by an act of 1855, the 18 & 19 V. c. 111, enacting that all rights under a bill of lading shall vest in the consignee or endorsee named in the bill, and he shall be subject to the same liabilities in respect of the goods as if the contract contained in the bill had been made with himself. By s. 3, a bill of lading in the hands of a consignee or endorsee for valuable consideration is conclusive evidence of shipment as against the master or other person signing the same, though the goods or some part of them have not been shipped. But the master may exonerate himself by showing that the non-shipment was from no default of his, but of the shipper, or of the holder of the bill.

#### V. FREIGHT.

Freight is the money agreed to be paid for the carriage of goods by sea, and may be made payable either for the whole or part of a ship or cargo, or for the whole or part of the voyage, or by the month or any other stipulated period.

The terms of the freight are usually expressed in the charter-party or bill of lading. If a gross sum is stipulated to be paid for the whole ship or any part of it, the gross sum is payable though the freighter should not be able to complete his lading. If the agreement specifies payment to be made for every ton burthen of the vessel, such payment is to be made according to the ascertained tonnage of the vessel, not according to the quantity of goods laden. If the agreement is to pay so much per ton, cask, bale, or chest, freight is payable only for so many tons or articles put on board. In payment by quantity, the fractions of a ton, pipe, or pack, are not reckoned, unless expressly stipulated for in the charter-party.

Freight is not due until the voyage has been completed by the delivery of the goods at the port of consignment. Therefore, if a ship be captured or lost, no freight can be claimed. When a vessel is freighted from one port to another, thence to a third port, and so home to the port from which she sailed (which are called *trading voyages*), should she be captured or lost before her return to the port from which she first sailed, no freight will be due.

Although no freight is due unless a vessel completes her voyage and deliver her cargo at the port of delivery, yet, if advance-money has been paid and described as such in the charter-party, the freighter cannot recover it back, should the ship be lost or captured in the voyage. On the same principle it has been decided, that passage-money, paid in advance, is not re-

coverable, in case the vessel be wrecked, or unable to prosecute her voyage.

In the payment of freight for living animals, whether men or cattle, some of which may die during the voyage, the following distinction has been made:—If the agreement be to pay freight for *landing* them, the shipowner will be entitled to freight, notwithstanding their death; but, if for *transporting* them, no freight is due for those that die on the passage. No freight, however, is due for an infant born during the voyage.

Where freight is contracted for monthly, or for any other stated period, and the ship is lost or captured, the owner is entitled to freight for the number of months which has transpired previous to the loss or capture.

Payment of freight is demandable from the consignee alone; but receiving goods in the character of agent or broker will not create a liability to pay freight. As the payment of freight is usually made an express condition of the delivery of the goods, the owner has no lien on them till that condition has been fulfilled, and the voyage completed.

If part of the cargo be thrown overboard for the preservation of the ship and the remainder of the goods, or if the master is compelled to sell a part of the cargo for victuals or repairs; in these cases, if the ship afterwards reach the place of destination, the owners will be entitled to the freight for the goods so cast overboard or sold.

As to the right of the freighter to *abandon* his goods, it has been settled, that, where goods have been so damaged during the voyage, as to render the freight of more worth than the goods, the freighter, in certain cases, may abandon them, and, by so doing, discharge himself from the freight. If the damage has proceeded from the fault of the master, the merchant may recover compensation from him or the owner, provided he has not received the goods. But if the damage has been caused by the perils of the sea, or has proceeded from natural decay, or any destructive action inherent in the commodity itself, the merchant must bear the loss and pay the freight.

#### VI. BOTTOMRY AND RESPONDENTIA.

Bottomry is in the nature of a mortgage of a ship, when the owner borrows money to enable him to proceed on his voyage, and pledges the keel, or *bottom* of the ship, as security for the repayment. In this contract it is understood, if the ship be lost, the lender loses his whole money; but, if it return in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest. If the ship and tackle be brought home, they are answerable for the money lent, as well as the *person* of the borrower.

But, if the loan is not upon the vessel, but upon the goods and merchandise, which must be necessarily sold or exchanged in the course of the voyage, then only the borrower, personally, is bound to answer the contract; who, therefore, in this case, is said to raise money on *respondentia*.

In this consists the difference between *bottomry* and *respondentia*; the one is a loan upon the ship, the other a loan upon the goods. In the former case, the lender runs no risk, though the goods shall be lost; in the latter, the lender is entitled to principal and interest though the ship be lost, provided the goods are safe.

The amount of the loan on *bottomry* or *respondentia*, in England, is not restrained by any law whatever, though it is, in many maritime States, by express regulation: the only restriction in England is that already mentioned, with respect to money lent on ships and goods going to the East Indies, which must not exceed the value of the property on which the loan is made.

The *bottomry* and *respondentia* bonds usually express the nature of the risks to which the lender is liable, and are nearly the same against which the underwriter, in a policy of insurance, undertakes to indemnify. These risks are tempests, fire, capture, and every other casualty, except such as arise either from defects in the ship or merchandise on which the loan is made, or from the misconduct of the borrower.

The *respondentia* interest is frequently at the rate of 40 or 50 per cent., or in proportion to the risk and profit of the voyage. The *respondentia* lender may *insure* his interest in the success of the voyage, but it must be expressly specified in the policy to be *respondentia* interest, unless there is a particular usage to the contrary.—*Park on Insurance*, 11.

#### VII. AVERAGE.

Average, in maritime contracts and in insurance, has three significations: 1. It means a partial loss of anything insured, as if the ship or goods are partially lost or injured, and the insurer is bound proportionally to compensate the insured: which is called a *particular average*. 2. If the master of a ship in distress throws goods overboard with a view to preserve the whole ship and cargo, that is a total loss to the owners of these goods; but that loss, so sustained for the general welfare, is brought into a *general average*, and all who are concerned in the ship, freight, or cargo, must bear a proportional part of it: which average loss so borne by them, their insurers, if they have any, must make good to them. 3. Average is applied to a small payment, which merchants who ship goods make to the master for his personal care and attention to the goods so entrusted to him.



As to particular averages, the insurance companies and underwriters limit their liabilities by conditions attached to their policies to £3 and £5 per centum upon certain articles specifically named. But this restriction does not extend to a loss arising from a general average, in which case the insurers are liable, even though the loss is under three per cent.

The loss arising on a general average is always payable by the insurer, and rated on the value of the articles which are to contribute thereto. The ship is valued at the price she is worth on her arrival at the port of delivery. The freight is valued after deducting seamen's wages, pilotage, and other small charges, denominated *petty averages*, of which the cargo bears two-thirds, and the ship the remaining third.

The goods saved as well as lost are valued at the price they would have fetched at the port of delivery. Each person's share of the loss will bear the same proportion to the value of his property, that the whole loss bears to the aggregate value of the ship, freight, and cargo.

When the loss of the ship's rigging or masts is compensated by a general average, two-thirds only of the value of the new articles is contributed. The contribution in general is not made till the ship arrives at the port of delivery, but accidents may happen which may cause a contribution before she arrives at her destined port.

When goods are shipped on an invoice, an average loss upon a policy must be calculated upon the invoice price, and not upon the price of the market at which the damaged goods are arrived.

#### VIII. PASSENGER STEAMERS.

By 17 & 18 V. c. 104, these are held to include every *British* steam-ship carrying passengers to, from, or between any place or places in the United Kingdom, excepting steam ferry boats working in chains. Every steamer to be surveyed twice at the least in each year; and the Board of Trade to appoint such number of fit and proper persons to be shipwright surveyors and engincer surveyors for the purposes of this act at such ports or places as it thinks proper, and may also appoint a surveyor-general for the United Kingdom, and may remove such surveyors, and fix and alter the rates of remuneration to be received by them. Surveyors, in the execution of their duties, to go on board any steam-ship at reasonable times, and to inspect the same, or the machinery, boats, equipments, or articles on board, or any certificates of the master or mate, not unnecessarily delaying the ship from proceeding on any voyage; and, if in consequence of any accident to any ship, or for any other reason, they consider it necessary so to do, to require the ship to be taken into dock for the purpose of surveying the hull thereof;

and any person who hinders such surveyor from going on board any such steam-ship, or otherwise impedes him in the execution of his duty, penalty not exceeding £5. Every surveyor who receives, directly or indirectly, from the owner or master of any ship surveyed by him any fee or remuneration, in respect of such survey, otherwise than as the officer and by the direction of the Board of Trade, shall incur a penalty not exceeding £50. Declaration of survey to be given to the owner by the surveyor, and the owner to transmit the declaration to the Board of Trade within fourteen days; penalty for every day's delay beyond, 10s. each day, s. 310.

#### IX. WRECK AND SALVAGE.

By the 17 & 18 V. c. 104, s. 458, when any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the United Kingdom, and services are rendered by any person in assisting such ship or boat, in saving the lives of the persons belonging to such ship or boat, or in saving the cargo or apparel of such ship or boat, or any portion thereof; and whenever any wreck is saved by any person other than a receiver within the United Kingdom, there shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage. Whenever any ship or boat is stranded, and such ship or boat, or any part of the cargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner by the inhabitants of the hundred or district in or nearest to which the offence is committed, in manner provided by an act of 8 G. 4, c. 31, in case of the destruction of churches and other buildings by a riotous assemblage.

#### X. PILOTAGE.

A pilot is the person who steers or directs the course of a vessel, and is a term applied to an important class of men licensed to navigate ships within certain limits of the coast, and inward and outward the rivers and harbours of the kingdom. Pilotage in the Thames and Medway, and along the coast from Orfordness to the Isle of Wight, is regulated by the corporation of the Trinity House and the Lord Warden of the Cinque Ports.

In other ports of the United Kingdom, pilots are appointed and regulated either by local acts, or by ancient charters of incorporation, or by the Mercantile Marine Act, 17 & 18 V. c. 104. In all those parts of a voyage where a pilot is employed by regulation or usage, termed a "pilot's fair way," one must be obtained, unless exempt, as will be hereafter stated. It is only, however, *oversea* vessels, not coasting vessels, on whom the employment of pilots, within the pilotage jurisdiction, is compulsory. The master of a vessel having a regular pilot on board is not responsible for damage caused by the pilot's unskilfulness or negligence. But his proceedings must not be controlled by the master. On the other hand, the pilot's presence does not absolve the master from the consequences of his own carelessness.

The authorities, in matters of pilotage, are empowered to qualify masters or mates who have obtained certificates, to conduct their own vessels. Any master or mate who has passed an examination, and obtained a certificate of seamaanship and fitness, may navigate his own vessel within the limits in regard to which he has passed his examination. Such certificate to be renewed annually; but the certificated party not to employ any unlicensed pilot to assist him. Certificates can only be granted by the Trinity House, or other competent authority, to be used within the limits of their jurisdiction, and when a concurrent jurisdiction exists, the certificate must be obtained from each separate authority.

## CHAPTER XII.

### *Insurance.*

INSURANCE is defined, by Marshall, to be a contract whereby one party, in consideration of a stipulated sum, undertakes to indemnify the other against certain perils or risks to which he is exposed, or against the happening of some event. The party who takes upon him the risk is called the *insurer*, sometimes the *underwriter*, from subscribing his name at the foot of the policy; the party protected by the insurance is called the *insured*; the sum paid to the insurer, as the price of the risk, is called the *premium*; and the written instrument, in which the contract is set forth and reduced into form, is called a *policy of insurance*.

A policy may be either *valued* or *open*; in the former, the property insured is valued and specified; in the latter, it is not mentioned. In an open policy the real value must be proved, in the other it is settled.

Policies are usually effected by the intervention of a broker;

they must be duly stamped; and, being considered a simple contract, must be construed, as nearly as possible, according to the *intentions* of the contracting parties, and not according to the strict meaning of the words. The least shadow of fraud entirely vitiates the instrument: both parties are bound to disclose all circumstances within their knowledge: any concealment of facts, false statement, or misrepresentation, at the time of making the contract, cancels the policy.

Insurance is of different kinds; as of ships and goods against risk at sea; the lives of individuals; and of houses, buildings, and other property against fire. The subject may be distributed as follows:—

1. *Marine Insurance.*
2. *Wager Policies.*
3. *Insurance against Fire.*
4. *Insurance of Lives.*
5. *Annuities for Lives.*

#### I. MARINE INSURANCE.

By the 6 G. 1, c. 18, the Royal Exchange Assurance Company and the London Assurance Company had the exclusive privilege of underwriting policies of *marine* insurance, and all undertakings by other persons were declared void. But by 5 G. 4, c. 114, any other corporation, or any persons in partnership, may grant policies of insurance on ships or goods at sea, and also make contracts of bottomry.

In a marine insurance, if a man warrant to sail on a particular day, and fail to do so, the underwriter is no longer liable. So, if the warranty be to sail after a specific day, and the ship sail *before*, the policy is equally vacated.

If the insured warrant the vessel to sail with *convoy*, and it do not, the policy is void. But if the insured warrant the property on board to be *neutral* property, and it is not, the contract is not merely void, as for a breach, but it is absolutely void from the commencement, on account of the fraudulent concealment of a known fact.

The changing of a ship, or, as it is commonly called, the *bottom*, is a bar to the insured recovering upon a policy of insurance against the underwriter; or a deviation from the usual and regular course of the voyage equally discharges the insurer from liability.

It has also been determined that every ship insured must, at the time of the insurance, be able to perform the voyage, unless some external accident should happen; for if she have a *latent* defect, even wholly unknown to the parties, that will vacate the policy, and the underwriter is discharged.

Insurance made on a voyage prohibited by the laws of the

country, or to cover any trading with the enemy, or to protect the importation or exportation of commodities declared to be illegal, are all void, and the insured cannot recover the premium.

Nor in any case can a premium once paid upon an *illegal* insurance be recovered back.

## II. WAGER POLICIES.

Contracts of insurance are protected and encouraged by the laws with a view of distributing the loss or gain among a number of adventurers, so that no unforeseen calamity may plunge any single individual or party into irretrievable ruin. But a practice formerly obtained of insuring large sums without having any property on board, or interest at stake, which was called an insurance, *interest or no interest*; and also of insuring the same goods several times over; both of which were a species of gambling, without any advantage to commerce, and were denominated *wager policies*.

To prevent such fictitious or gambling transactions, the 19 G. 2, c. 37, provides that all insurances, interest or no interest, or without further proof of interest than the policy itself, or by way of gaming, or wagering, or without benefit of salvage to the insurer; shall be null and void; and that no re-assurance, or double assurance, shall be lawful, except the former insurer shall be insolvent, a bankrupt, or dead; and lastly, in the East India trade, the lender of money on bottomry, or at *respondentia*, shall, alone, have a right to be insured for the money lent, and the borrower shall, in case of a loss, recover no more than his absolute share in the ship or merchandise.

The statute does not extend to *foreign* ships, upon which there may still be insurances, interest or no interest; these were not included in the act, from the difficulty of bringing witnesses from abroad to prove the interest.

## III. INSURANCE AGAINST FIRE.

By a contract of insurance against fire, the insurer, in consideration of a certain premium received by him, either in a gross sum or by annual payments, undertakes to indemnify the insured against all loss or damage which he may sustain in his house, or other building, stock, goods, and merchandise, by fire, during a limited period of time.

Some of the companies for insuring against fire have been established by royal charter; others by deed enrolled; and others give security upon land for the payment of losses. The rules by which they are governed are created by the managers, and a copy given to every person at the time he insures; so that by his acquiescence he submits to their proposals, and is fully

apprised of the terms, by a compliance with which he will be entitled to indemnity.

Policies of insurance against fire are not assignable ; nor can the interest in them be transferred from one person to another without the consent of the insurers. But, when a person dies, the policy and interest therein continue to the parties to whom the property belongs, provided, before any new payment be made, they procure their names to be endorsed at the insurance office, or the premium to be paid in their names.

In the body of the policy the insurers acknowledge the receipt of the premium at the time of making the insurance ; and, by the printed proposals, it is stipulated that no insurance shall take place till the premium be actually paid by the insured or their agents. The Exchange Company, the Phoenix, and some others, however, allow fifteen days for the payment of the insurance upon annual policies and all other policies of a longer period. But policies for a shorter period than a year cease at six o'clock on the evening of the day mentioned in the policy.

When a fire happens, notice should be immediately given to the office, and, as soon as possible after, or within a limited time, according to some regulations, an account given, upon oath or affirmation, of the loss sustained, supported by books of account, and such other vouchers as may be required or may be in existence. It is also required by some offices to procure a certificate, signed by the minister and churchwardens, together with some respectable inhabitants of the parish, not concerned in the loss, importing that they are well acquainted with the character and circumstances of the parties, and that they know or believe they have suffered the damage alleged.

To whatever amount persons insure, they can only recover to the amount of the loss actually sustained ; for were it otherwise it would obviously open a door to fraud and collusion.

Most offices consider themselves liable to *partial* losses : and the printed conditions of some of them undertake to allow all reasonable charges attending the removal of goods in cases of fire, and to pay the sufferer's loss where the goods are destroyed, lost, or damaged by such removal.

#### IV. INSURANCE OF LIVES.

The insurance of a life is a contract whereby the insurer, in consideration of a certain premium, either in a gross sum or periodical payments, proportioned to the age, health, profession, and other circumstances of the person whose life is insured, undertakes to pay the person for whose benefit the insurance is made a stipulated sum, or an equivalent annuity, upon the death of the person whose life is insured, whenever this event shall happen, if the insurance shall be for the *whole* life, or in case

this shall happen within a certain period, if the insurance be for a *limited* time.

The chief utility of this kind of insurance is in making a provision for a family, or others, whose dependence is on the life of an individual. Persons having incomes determinable upon their own lives, or the lives of others, arising from landed property, from professions, from church livings, from public employments, pensions, annuities, &c., by paying such an annual premium as they can spare from their present wants, may secure to their widows, their children, or other dependents, an adequate sum of money, or an equivalent annuity, payable upon their death.

It is also resorted to by those who are desirous of raising a loan, for which the chance of repayment depends on the life of the borrower. Thus, if A lend £100 to B, who can give nothing but his personal security, in order to secure A, in case of his death, B applies to C, an insurer, to insure his life in favour of A, by which means, if B die within the time limited in the policy, A will have a demand upon C for the amount of the insurance.

The same rules and observations which apply to insurance in general, and which we have noticed more particularly under the head of Marine Insurance, apply to insurance upon lives; the same mode of construing the policy is to be adopted; fraud will equally vacate one as the other; and the same attention must be paid to all warranties with regard to health, age, profession, &c.

Where there is an express warranty that the person is in *good health*, it is sufficient that he is free from any existing ailment; for it can never mean that he is free from the seeds of disease. Even if the insured labour under a particular infirmity, if it can be proved by medical men that it did not at all, in their judgment, contribute to his death, the warranty of health has been fully complied with, and the underwriter is liable.

With respect to the risk which the underwriter is to run, it is usually inserted in the policy, and includes all those accidents to which human life is exposed, except suicide, or death by the hand of justice. When the risk is once begun, there can be no apportionment or return of premium. So, if a person whose life is insured, were to put an end to it next day, or should be executed, there would be no return of premium, though the underwriter is discharged.

To prevent gambling transactions in insurance upon lives, it is declared, by 14 G. 3, c. 48, that every insurance is void made upon life, or other event, wherein the person for whose benefit or on whose account such insurance is granted shall have no *interest*. It is further provided that the name of the person interested shall be inserted in the policy: and in all cases where

the insured has an interest on such life or event, no greater sum shall be recovered or received from the insurer than the amount or value of the interest insured.

## V. ANNUITIES FOR LIVES.

Annuity is a yearly payment of a certain sum of money for life, or a term of years; if payable out of lands it is properly called a *rent-charge*; but if both the person and estate be made liable, as they most frequently are, then it is called an annuity. It arises frequently out of the same necessity as an insurance on life, the inability of the borrower to give the lender a permanent security for the return of the money borrowed; he therefore stipulates to pay, during his life, an annual sum proportioned to the loan advanced and the contingency of the borrower's death.

The grantee of an annuity usually insures the life of the grantor, and will not advance the money till he is certain some insurance office will insure the life, and he usually adds the amount of the annual insurance to the annual interest, and makes the grantor pay *both* in one entire sum of, perhaps, £15 *per cent.*; so that in truth the grantee is, out of the pocket of the grantor, indemnified from all risk, and clears eleven or twelve per cent. To throw some check upon improvident transactions of this kind, which are usually carried on with privacy, various acts of parliament have been passed.

By the 53 G. 3, c. 141, explained by 3 G. 4, and 7 G. 4, c. 75, every annuity or rent-charge, granted for life, or a term of years, is to be enrolled in a Court of Chancery thirty days before the execution thereof, and the date, the *names* of the witnesses, and of the parties beneficially interested therein, are to be stated in the deed, bond, or instrument.

Contracts for annuities by persons under age are declared void; and persons soliciting such, or obtaining their promise, or word of honour, not to plead infancy, or otherwise, against the demand of any such annuity or rent-charge, are guilty of a misdemeanor. So are solicitors, brokers, or others, acting between the parties, who demand or accept, in money or any other gratuity, more than 10s. per cent.

Under 10 G. 4, c. 24, the commissioners for the reduction of the national debt may grant life annuities payable out of the consolidated fund, either on one or two lives, or on the continuance of two joint lives, and in general any description of annuity, either to commence immediately or at a future period, or for any term of years. Annuities granted under this act are proportioned to the duration of human life, as ascertained by recent tables of observation, approved by the Treasury. The purchase is to be made either by the transfer of not less than



£100 stock, or by the advance of money, or by the payment of any sum yearly not less than £5. Annuities will not be granted on the life of any nominee under fifteen years of age, nor in any other case where the commissioners may think fit to decline.

Respecting the purchase of annuities by depositors in saving banks, see p. 248.

## CHAPTER XIII.

### *Deeds—Assignment—Composition and Inspectorship—Warrant of Attorney—Covenant—Promise.*

A DEED is an instrument in writing, on parchment, or paper, signed, attested, sealed and delivered by the parties. It may be written in any hand, or in any language; and, if it be made by more parties than one, there ought to be as many copies of it as there are parties, and each should be cut or indented at the margin, to tally or correspond with the other: which deed so made is called an *indenture*. A deed made by one party only is not indented, but polled, or cut even, and therefore called a *poll deed*, or single deed. Indenting, however, is not indispensable to the validity of a deed, and is only used to afford an additional mode of authentication, mostly in the cases of marriage settlements, partnerships, and leases. Although there are more parties than one to a deed, it seldom happens that more than one copy is executed, in order to avoid the heavy charge of stamp duty, and which is deposited with some person for their joint use.

It seems that there are seven things necessary to a valid deed.

1. The parties must be able to contract, and there must be a subject to contract for; all which must be expressed by sufficient names.
2. The deed must be founded upon a valuable or good consideration, not upon fraud or collusion, to deceive purchasers or just and lawful creditors. But, in this case, though the deed will be void, as against *bonâ fide* purchasers and lawful creditors, it will not be void as between the parties themselves, that is, the grantor or grantee cannot vacate his own act.
3. The deed must be *written* or *printed*, and on a stamp, otherwise it cannot be given in evidence.
4. The matter of the writing must be legally, orderly, and intelligibly set forth.
5. The deed must be *read* to any of the parties, if required. If read falsely it is void; and if any of the parties cannot read, it must be read to them.
6. It must be *sealed* and *signed*; though it seems sealing and delivering without signing is sufficient; unless in cases under the Statute of Frauds, and deeds executed under powers, 6 *Mudd.* 166.
7. The last requisite to a deed is the *attestation*, or execution of it, in presence of wit-

nesses; though this is necessary rather for preserving the evidence than for constituting an essential part of the deed.

Bad grammar will not make a deed void: but erasure, or interlineation, in a material part, will have that effect, unless some memorandum thereof be made on the back of the deed, testifying that it was done before sealing; and if words are blotted out in a deed by a grantee or lessee himself, after execution, although it be not in a place material, it will make the deed void.

When the seal has been affixed, and afterwards broken off, or defaced by accident, the deed is still valid. If, however, a person to whom another is bound, *intentionally* break off the seal, it is said to destroy the instrument, but not so if the party who is bound break off the seal.

It is not essential to the validity of a deed that it should be *dated*; when no date is inserted, the time will be reckoned from the delivery, 2 *Raym.* 1076.

## II. ASSIGNMENT.

An *assignment* is a deed or instrument of transfer, the operative words of which are to "assign, transfer, and set over" to another some right, title, or interest in real or personal property. A possibility, right of entry, title for condition broken, a trust or thing in action, or cause or suit, cannot be granted or assigned over. An office of trust is not assignable, neither is a personal trust, or trusteeship, or executorship, assignable. Arrears of rent, and the like, as things in action, are not assignable. Several things are assignable by custom, or act of parliament, which seem not assignable in their own nature; as promissory notes, bills of exchange, bail-bonds by the sheriff, and the effects of a bankrupt.

The subjects most usually assigned are leases and terms of years, legacies, mortgages, goods, and interests in funded property; transfers of goods, furniture, and ships, are generally styled *bills of sale*. In the transferring of property in general terms, contingencies will not pass, unless particularly mentioned. An assignment of debt to another may be effected by mere words; but the assignee's assent, and of all parties interested in the transfer, is requisite.

An assignment for the Benefit of Creditors is generally of the whole of the debtor's property, which assignment the creditors accept in lieu of their respective claims. Unless, however, all the creditors assent, such assignment is a fraud on the bankrupt laws, by disabling an insolvent from carrying on business; and by 6 G. 4, c. 16, an assignment of *all* the estate for the benefit of *all* the creditors is an act of bankruptcy, *if* a commission shall issue within six months from the execution of such assignment.

An assignment by joint-traders must have the assent of all the separate creditors, as well as the joint creditors, or the assignment will be void, as to the separate creditors who may not assent.

A deed of trust for the payment of debts extends only to debts which had been contracted at the time of executing the deed.

A deed of assignment, if not executed at the period agreed upon by the creditors, is void in law; but if it be afterwards executed by all the creditors, it is valid in equity, *Coop.* 102.

If a person, after assigning his property, embezzle any portion, he is disqualified from deriving any benefit from such assignment.

By 13 Eliz. c. 5, all gifts, grants, and assignments of property, with the *intent* of delaying or defrauding creditors or others of their just claims, are void; and principals and accomplices in such fraudulent conveyances to forfeit one year's value of the land, and the whole value of the goods, and suffer six months' imprisonment. Act does not extend to conveyance or assignment on good consideration: nor to persons not privy to the fraud or collusion.

In the construction of this statute it has been held, that the retention by the debtor of the possession of goods after assignment, is *prima facie* evidence of fraud. Nor will it alter the case, that the creditor had reserved to himself the liberty of taking possession within a stipulated time, or that he had conditioned that the profits should be accounted for to himself from the date of the assignment, if the party making the assignment has been allowed to have possession of the property assigned.

### III. COMPOSITION AND INSPECTORSHIP.

Composition is when creditors agree to accept part of their debts in full discharge of the whole, either by the payment of a certain sum in the pound at one time, or by instalments, guaranteed or not by a responsible person, or by an assignment of securities. In law, an agreement for composition *not under seal* is not binding on a creditor, even after acceptance of the composition, unless there is some consideration for it, either by an assignment of goods or the responsibility of a third party.

When a creditor executes a composition deed, although he does not set the amount of his debt opposite to his name, yet he is bound by the terms of the composition to the whole amount of his then existing debt.

It is incumbent on an insolvent to fulfil the terms of the composition, or the creditors will be released from their obligations to accept it. To entitle himself to the full benefit of the bond, he must not practise any *fraud*, but give a fair representation of

his affairs; for if any misrepresentation has been used to obtain the creditor's consent, the creditor will not be bound by the instrument, although he may have executed it.

A *private* agreement between a creditor and insolvent for additional security, though not for more than the amount of the composition, is fraudulent and void. So, also, is *any private* agreement with a creditor to pay him in full, or more than the other creditors. But a partial agreement with a creditor to pay his full debts does not invalidate the bond; provided such agreement is not *secret*, but made with the full knowledge and assent of the other creditors, 13 *Ves.* 586.

A creditor may be bound by a composition deed, although he has not actually signed it. For if a creditor acts under a composition agreement, a court of equity will act under it also, and the creditor's assent to the arrangement will be equally implied, as if he had formally assented to and executed the bond.

If the holder of a bill of exchange or promissory note agree to accept a composition from the *acceptor* of the bill or drawer of the note, he will discharge all the others, who are subsequent parties, unless the composition is entered into with their consent.

Under 6 G. 4, c. 16, a bankrupt, having passed his last examination, nine-tenths in number and value of the creditors may accept an offer of composition or security for such composition, made by the bankrupt or his friends, and the commission be superseded.

A *Deed of Inspectorship* is sometimes entered into by an insolvent, which appoints certain persons inspectors of his dealings for a limited period, or until he has paid the whole, or such composition for his debts as is agreed upon. Such a deed should give power to the trustees to stop the insolvent, if he commit any breach of the agreement, but should avoid making such a disposition of the property, or any part thereof, as to constitute an act of bankruptcy.

#### IV. WARRANT OF ATTORNEY.

This instrument is sometimes incautiously given by persons who are sharply pressed by their creditors; both a warrant of attorney and *cognovit* authorize the creditor to enter up judgment and levy execution, either instantly or within a certain time specified in the instrument; the party giving such instrument is liable, after the same is due and in operation, at any moment, to have, perhaps, all his property taken from him and sold at ruinous prices, thereby curtailing, if not entirely destroying, his future prospects. Moreover, the debtor is placed in a painful state of incertitude and dependence previous to the execution; and as it is necessary to file the warrant or cognovit,

within twenty-one days from its date, in a public office, that, alone, is sufficient to deter other persons from giving credit, the fact being easily ascertained of such a sweeping instrument being suspended over the party's head and property. It was expected this instrument would be more frequently resorted to by creditors after the abolition of arrest on *mesne process*: and, to protect the debtor, the 1 & 2 V. c. 110, enacts that no warrant of attorney or cognovit shall be of force unless there be present an attorney on behalf of the party executing, expressly named by him, and attending at his request to inform him of its nature and effect before it is executed; which attorney is to subscribe his name as a witness to the execution.

The 3 G. 4, c. 39, provided that a book should be kept by the clerk of the dockets in the Court of King's Bench, in which every warrant of attorney, or *cognovit actionem*, or copy thereof, should be entered, to be searched at all reasonable times by any one, on payment of sixpence for each person searched for. The 6 & 7 V. c. 66, directs that, in addition to such book, another book or index shall be kept of the names, additions, and descriptions of the persons giving such warrants of attorney, or cognovits, but no further particulars (these being entered in the book under the previous act, as heretofore); this index to be open to inspection, upon payment of one shilling for the search for each name sought for.

#### V. COVENANT.

A *covenant* is the agreement of two or more persons to do or omit some specified act, and is created by deed, in writing, sealed and executed by the parties.

If a man covenant to be in London on a particular day, and is not in London by the time appointed, this is a breach of covenant, for which an action will lie. So, if a man for a valuable consideration, agree that he will not exercise his trade or profession within a particular place, he is bound by it: but an obligation which binds a person to a total restraint of trade, whether for a limited time or generally, is unlawful and void.

A covenant must be to do what is *lawful*, or it will not be binding; and if the thing to be done be impossible, the covenant is void.

If a man covenant with one to pay him money on a time to come, and the covenantee die before the day, his executors have an action of covenant for the money. Also in every case where a testator is bound by a covenant, the executor is liable, if it be not determined by the testator's death; but there may be a covenant only to be performed by the parties themselves.

In deeds and articles of covenant, sometimes, a clause for performance with a penalty is inserted; and, at other times,

and more frequently, bonds are given for the performance, with a sufficient penalty, separate from the deed, which last being sued, the jury must find the penalty; but, on covenant, the damages only.

The common use of covenants is for assuring quiet enjoyment of land, for payment of rent reserved, and concerning repairs, damages, and accidents. They are generally construed most strongly against the covenantor, and in favour of the covenantee.

## VI. PROMISE.

A *promise* is of the nature of a verbal covenant, and, when made upon sufficient consideration, wants only the formality of writing and sealing to be absolutely the same. The legal remedy, however, for non-performance, is different; since, instead of an action of covenant, there only lies an action on the case for the *assumpsit*, or undertaking of the defendant: the failure of performing which is the wrong or injury done to the plaintiff, the damages whereof a jury are to estimate and determine.

The Statute of Frauds enacts, that, in the five following cases, no verbal promise shall be sufficient to ground an action upon, without, at the least, some note or memorandum of the transaction be made in *writing*, and signed by the party to be charged therewith, or some other person lawfully authorized by him:—1. Where an executor or an administrator promises to answer damages out of his own estate. 2. Where a man undertakes to answer for the debt, default, or miscarriage of another: and in this case even a written undertaking is void, unless a good consideration appear in the writing, and this consideration cannot be proved by parol evidence. *Wain v. Walters*, 5 E. R. 10. 3. Where an agreement is made upon consideration of marriage. 4. Where any contract or sale is made of lands, tenements, hereditaments, or any interest therein. 5. And, lastly, where there is any agreement that is not to be performed within a year from the making thereof.

Though the statute imposes the necessity of *writing*, it does not thereby waive any of the prior requisites to make a valid promise; as, for example, the want of a valuable consideration.

The statute requires the “agreement, or some memorandum or note thereof,” to be put in writing; this means not merely the bare promise, but the *terms* of the contract and consideration.

The third clause does not include *mutual* promises to marry; it relates only to agreements to pay marriage-portions, make settlements, or to do other acts in consideration of marriage.

If a promise depend upon a contingency, which may or may not fall within a year, it is not within the statute: as a promise

to pay a sum of money upon a death or marriage, or upon the return of a ship, or to leave a legacy by will, is good by parol; for such a promise may, by possibility, be performed within the year.

A court of equity will decree a specific performance of a verbal contract when it is confessed by a defendant in his answer, or when there has been part performance of it, as by payment of part of the consideration money; for such acts preclude the party from denying the existence of the contract, and prove that there can be no *fraud* or perjury in compelling the execution of it. But Lord Eldon thought that a specific performance cannot be decreed if the defendant, in his answer, admit a parol agreement, and at the same time insist upon the benefit of the statute, 6 *Ves. Jun.* 37.

If one party only sign an agreement, he is bound by it: and if an agreement be by parol, but it is agreed it shall be reduced into writing, and this is prevented by the fraud of one of the parties, performance of it will be decreed.

When a man is under a moral obligation, as a *minor* to pay the debts contracted in his minority; or a debt protected by the Statute of Limitations; or a bankrupt in affluent circumstances promises to pay his debts in full; the honesty and rectitude of the thing in these cases is deemed a sufficient consideration.

By 9 G. 4, c. 14, no confirmation, after full age, of any promise or contract made by an *infant*, is sufficient to sustain an action unless given in *writing*, signed by the party to be charged therewith. Nor is any promise to pay a debt, protected by the Statute of Limitations, valid, unless *in writing*, and signed in a similar manner.

See *Promises*, as a *guarantee*, in chapter on CONTRACTS.

## CHAPTER XIV.

### *Debtors and Creditors.*

CONSIDERABLE efforts have been made of late years to improve the Debtor Laws and to lessen the costs of litigation in the recovery of debts, especially those of small amount; still, the anxiety, loss of time, and expense incurred in suits are such as to render considerate persons very cautious in instituting them. Whether an action is begun in a superior court, or in one of more limited jurisdiction, the costs are onerous, and which the debtor not unfrequently, by availing himself of the Insolvent Acts, throws upon the creditor. Another discouraging accompaniment of law-suits is the rule that allows no more than *taxed costs* to a successful litigant, leaving him to pay the difference between them and the law-charges of his legal adviser. It often

happens that a person who sues for a trifling debt, and gains the day *with costs*, is minus three or fourfold as much for his own share of the expenses.

Having prefaced these admonitory hints, we shall briefly notice the late changes in the relations of Debtor and Creditor. By 1 & 2 V. c. 110, the power to arrest in *mesne process* is abolished, and the debtor can only be arrested after judgment obtained from a competent tribunal, except he is likely to leave the kingdom, under which apprehension, if the debt amount to £20, and affidavit be made before a judge, a special order may be obtained to hold him to bail. In compensation for the loss of power over the person, more effectual remedies have been given to judgment creditors over the property of their debtors by empowering the sheriff to deliver execution of all lands and tenements, freehold or copyhold, of which the debtor, or any one in trust for him, shall be possessed, or over which he has any disposing power, for his own benefit, at or after the time of entering up judgment. The sheriff may also, under a *feri facias*, seize money or bank-notes of any kind, and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, the money and bank-notes to be paid over to the creditors, and the cheques, bills, &c., to be held by the sheriff as security. Judgments are to carry interest at the rate of four per cent.

In 1844 another important experiment was made in the Debtor Laws; the act of 1838 having abolished the power of arrest in *mesne process*, the 7 & 8 V. c. 96, s. 57, abolished arrest on *final process*, and prohibited imprisonment upon any judgment obtained in any court when the debt recovered did not *exceed twenty pounds*, exclusive of costs. Persons under execution at the time of this act for debts of less amount than £20, might obtain their discharge on application to a judge, and in consequence the prisons were immediately cleared of all debtors incarcerated for small sums. But a power of imprisonment was allowed to the creditor by s. 59, if the debt had been contracted under false pretences, or with a fraudulent intent, or without having at the time any reasonable assurance of being able to pay.

The abolition of the power of imprisonment, both on *mesne process* and for judgment debts not exceeding £20, was a great curtailment of creditorial coercion, especially of retail tradesmen, whose current book debts are chiefly below that amount; and consequently it deprived them of all compulsory process against the person for the recovery of small debts, even under judgment, leaving them solely to an execution against property, which in the case of debtors who were not householders, or without seizable chattels, might be evaded, either by the clandestine removal or disposal of their goods. The act, therefore, was equivalent to



the confiscation of debts under £20 owing from the numerous floating class of debtors; but a remedy was attempted, in the following session, by the 8 & 9 V. c. 127.

Under this act it is provided, that any creditor obtaining a judgment or order from any court of competent jurisdiction in England, in respect of a debt not *exceeding* £20, besides costs of suit, may obtain a summons for such debtor from any commissioner of bankruptcy, or any inferior court for the recovery of small debts having for a judge either a barrister, special pleader, or an attorney of not less than ten years' standing, such courts having jurisdiction over the district in which the debtor resides. The application is to be by petition. On the debtor appearing he may be examined, and if the creditor think fit, be interrogated as to the manner and time of his contracting the debt, the means or prospect of payment he had, or may then have, and as to the disposal of any of his property since contracting the debt; the creditor may also be examined, if the court think fit or the debtor desire it, as to the nature of the claim; and the court is to make an order on the debtor for the payment of the debt in instalments or otherwise. If the debtor fail to attend, without affording a satisfactory excuse for non-attendance, or if he refuse to disclose his property or transactions respecting the same, or not answer to the satisfaction of the court, or shall appear to have been guilty of fraud in contracting the debt, or of having concealed or made away with his property in order to defeat his creditors, or if he appear to have the means of paying the instalments ordered by the court and neglect to do so, the court is empowered to commit any such debtor to the common gaol for debtors for any time not exceeding forty days. No protection or interim order from the Bankruptcy or Insolvent Debtor's Court, nor any certificate obtained after such order for imprisonment is issued, is available to protect the person of the debtor. Imprisonment under the act does not operate as an extinguishment of the debt; but, on payment of debt and costs, or the instalments due, the debtor may be liberated from confinement, with the consent of the creditor and the court. In applications to the court, either by creditor or debtor, it is not requisite to employ either counsel or attorney. Wearing apparel, bedding, and implements of trade, to the value of £5, are protected from execution. Suits, in which the claim exceeds £10, may be removed by certiorari, or the leave of a judge, into the superior courts of Westminster. Lastly, power is given to execute warrants and levy executions, out of the jurisdiction of the court, by procuring the endorsement of a justice of the peace for the district.

The application under the act, to summon a debtor, must be signed by the creditor himself: the signature of an attorney or agent of the creditor will not suffice.

## II. COUNTY COURTS.

The ancient constitution of these courts has been adverted to (p. 37), and the dilatory and expensive nature of their proceedings. In the session of 1846 an effort was made to reform them, and render them more prompt and efficient for the *recovery of small debts and demands*, by the 9 & 10 V. c. 95, amended by 12 & 13 V. c. 101, and subsequent acts. Prior to the act of 1846 there were few courts of inferior jurisdiction in which debts above forty shillings could be recovered. The local courts that did exist in a few cities and towns, having proved serviceable both to plaintiff and defendant from the inexpensiveness of their proceedings, efforts have been made to extend the principle of them by the establishment of the County Courts. The leading provisions of the 9 & 10 V. c. 95, will be briefly recapitulated, with the amendments introduced by 19 & 20 V. c. 108, and later statutes.

By 9 & 10 V., the Privy Council is empowered to divide counties into districts, and the local courts existing to be held as county courts, and districts assigned them. Lord Chancellor to appoint the judges of the new courts, each of whom is to be a barrister of seven years' standing. Judges removable by Lord Chancellor for inability, or their districts may be changed. Judges may continue to act as justices, if in the commission of the peace. Officers of the court not to act as attorney or agent in the same court. A court to be held within the district once at least in every calendar month; notice of the days on which held to be given in a conspicuous part of the court. Clerk of the court to receive plaints and issue summonses, and no misnomer or inaccurate description of any person or place to vitiate the same, so that person or place be described as correctly known. Matters of fact and law determined solely by the judge. If debt exceed £5, a jury may be demanded by either plaintiff or defendant, or if it does not exceed £5, the judge may grant a jury trial. Under the order of the judge, and with consent of both parties, the issue may be settled by arbitration. If plaintiff does not appear, cause struck out; or if defendant is absent, cause to proceed as if present. Defendant may pay money into court, notice being given to plaintiff. The parties to the suit, their wives or others, may be examined. Penalty not exceeding £10 on any witness failing to attend where expenses have been tendered agreeably to the rules of the court. Judgment final, unless debt exceed £5, and then only removable with the consent of a judge of the superior court. Execution may be awarded against goods. Wearing apparel, bedding, and implements of trade to the value of £5, cannot be taken in execution. Imprisonment not to operate to an extinguishment of the debt. Pending execution, landlords may claim arrears of rent not

exceeding four weeks, if tenure be weekly, or two terms if tenure be under a year, but not exceeding one year's rent in any case. Payment of debt and costs to supersede execution, or debtor be discharged from custody. Possession of small tenements held over, and where the rent does not exceed £50 a year, may be recovered in the county courts.

By the act of 1850, the 13 & 14 V. c. 61, the jurisdiction of county courts is extended from £20 to the recovery of any debt, damage or demand, not exceeding the sum of £50.

In respect of actions in the superior courts for demands within the jurisdiction of the county court, it is enacted, that plaintiffs recovering in the superior courts sums not exceeding £20 in actions of contract, or £5 in actions of tort, shall have no costs. But judge on the trial may certify to entitle plaintiff to his costs, or the court or a judge at chambers may make an order that plaintiff have costs. The practical effect of these clauses is to give a concurrent jurisdiction above £20 to the superior courts in actions of contract, and above £5 in actions of *ex delicto*.

By s. 17 it is enacted, that if *both parties shall agree*, by a memorandum signed by them or their attorneys, the county court may try actions above £50; or any action in which the title to land, whether of freehold, copyhold, or leasehold, or other tenure, or any tithe, toll, market, fair or other franchise shall be in question.

By the 19 & 20 V. c. 108, the county court acts are amended, and the new act is to commence October 1, 1856, except the provisions relating to framing a scale of costs, and making rules and orders of practice.

By s. 6, a deputy judge must be a barrister of seven years' standing, or be a judge of a county court. The clerk of a county court in future to be called the "registrar," and the registrar to be limited to one court. Power given to registrar same as judge, on application of plaintiff, to issue summons against defendant, residing out of jurisdiction of court, if cause of action has arisen within its jurisdiction. Summons may be served or warrant executed within 500 yards of the boundary of the district of the court. A judge may sue or be sued in any district adjoining that of which he is judge; or if any officer of the court be plaintiff in his own court, defendant may remove cause to an adjoining district. Power given to the judge to change the venue, if either party to a cause think it may be more fairly tried in some other county court, ss. 7-22.

By s. 23, county courts not to have jurisdiction in any action for criminal conversation; but with respect to all other actions, which may be brought in any superior court of common law, if both parties agree, by a memorandum signed by them or their respective attorneys, that any county court named in such me-

morandum shall have power to try such action, such county court shall have jurisdiction to try the same.

By s. 24, where in any action the debt or demand claimed consists of a balance not exceeding £50, after an admitted set-off, the court may try the action. Where title shall come in question, the court, with consent of the parties in writing, may decide the claim. Where in an action brought in a superior court, the claim endorsed on the writ does not exceed £50, or where such claim, though it originally exceeded £50, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding £50, a judge of a superior court, on the application of either party, after issue joined, may, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name. If any action for debt or liquidated demand exceed £20, plaintiff may require defendant to give notice of intention to defend, on pain of judgment by default. If notice be given, action to be tried, and the registrar to inform plaintiff if notice has or has not been given, ss. 23-29. Costs of attorney in certain proceedings in county courts may be taxed by the registrar as between attorney and client; or in certain proceedings as between party and party, ss. 34, 35.

By s. 45, where judgment has been obtained in a county court for a sum not exceeding £20, exclusive of costs, the judge may order such sum and the costs to be paid at such times, and by such instalments, if any, as he shall think fit, and all such moneys shall be paid into court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith, or within fourteen clear days from the date of the judgment, unless the plaintiff, or agent, will consent that the same shall be paid by instalments, in which case the judge shall order the same to be paid at such times, and by such instalments, if any, as shall be consented to, and all such moneys, whether payable in one sum or by instalments, shall be paid into court.

By s. 50, the possession of small tenements may be recovered in county courts by landlords, where neither the value of the premises, nor the rent payable, exceeds £50, if the term of holding has expired, or been determined by notice. Possession may be recovered if rent does not exceed £50, if one half-year's rent be in arrear.

By s. 62, the bankruptcy or insolvency of the plaintiff in any action in a county court, which the assignees might maintain for the benefit of the creditors, shall not cause the action to abate if the assignees shall elect to continue such action, and to give security for the costs, within such reasonable time as the judge shall order, but the hearing of the cause may be adjourned until such election is made; and in case the assignees

do not elect to continue the action, and give security within the time limited by the order, the defendant may avail himself of the bankruptcy or insolvency as a defence to the action.

By s. 81, the salaries of the judges are fixed at the uniform rate of £1200, but certain judges named are to receive £1500 per annum. By s. 32, the Lord Chancellor may appoint five county court judges to frame rules and orders to regulate the practice and forms of proceeding.

CITY OF LONDON AND METROPOLIS.—The act of 1852, for the recovery of debts in the City of London and its liberties, comprises some of the principal provisions of the County Court Acts. Actions may be commenced for sums amounting to £50, and, in cases where the parties agree, actions beyond that amount may be tried. The judge of the Sheriff's Court is to preside, and the court is to be holden at Guildhall, or where the corporation shall direct. The act provides also for the performance of the duties of clerks, bailiffs, and other officers connected with the court. The officers may be paid by salaries instead of fees. A prison may be provided for the purposes of the act, and money borrowed. All suits are to be by plaints. A jury of five may be summoned, when required by either party. As in the County Court Acts, an appeal is given to the superior courts on points of law, or the admission or rejection of evidence. Defendants may be summoned on unsatisfied judgments, and committed to prison, which imprisonment is not to operate in discharge of the debts. Among the powers conferred by the act in the City of London, is one to obtain possession of small tenements, where the tenants hold over, without bringing an action of ejectment. The fees to be charged are set forth in a schedule annexed to the act.

By 19 & 20 V. c. 108, s. 18, the districts of the courts in the Metropolis are to be treated as *one district*, and the summons may issue and be served either in the district in which the plaintiff may dwell or carry on business, or in the district in which the defendant may dwell or carry on business.

### III. INSOLVENT NON-TRADERS AND SMALL TRADERS.

The 5 & 6 V. c. 96, amended by 7 & 8 V. c. 96, was passed to protect from all process against the person, insolvents that had become indebted without any *fraud or culpable negligence*, but so that their effects may be duly distributed among all their creditors. The protection extends only to persons not traders within the meaning of the bankrupt laws, or to traders whose debts amount to less than £300. These may petition the court, or district court of bankruptcy, within the district of which the petitioner has resided twelve calendar months; annexing to the petition a full and true schedule of his debts, with the names

of his creditors, and the dates of contracting the debts, and the security, if any, given for the same; also a statement of his property, or the debts owing to him, with their dates and the names of his debtors, and the securities, if any, received from them, together with any proposal the petitioner may have to make for the payment of the whole, or in part, of his debts. Upon such petition the commissioner will grant protection to the person and property of the insolvent, against all process, until his appearance in court, the estate and effects of the petitioner vesting, from the presentation of the petition, in an official assignee.

After the filing of the petition, notice must be given to each creditor, whose debt amounts to £5, and inserted in the *London Gazette*, and in some newspaper circulating in the county where the petitioner resides. Persons in prison for debt may be discharged on such petition, or be brought up by warrant. Wearing apparel, bedding, and working tools of the petitioner and his family, to the amount of £20, may be excepted in the schedule; but the articles excepted must be specified, with their value, and the commissioner may direct an appraisement of them.

Under the acts a final order may be obtained, discharging the petitioner from all the debts set forth in his schedule; but if such debts be found to have been contracted without probable means of paying them, or by fraud or breach of trust, or by reason of any judgment for breach of the revenue laws, promise of marriage, seduction, &c., the commissioner is not authorized to name any day for the final order, nor to renew the interim order of protection. The final order, when obtained, will protect from process for contempt, or costs issuing out of any civil or ecclesiastical court. But if the petitioner for protection wilfully omit anything in his schedule, he is liable to imprisonment, with hard labour, for three years.

#### IV. ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS.

By 7 & 8 V. c. 70, it is declared to be expedient that trust deeds, and other amicable modes of arrangement between debtors and their creditors, should be facilitated, and that better means should be provided for carrying the same into effect; and it is therefore enacted, that it shall be lawful for any debtor who is unable to meet his engagements with his creditors, such debtor *not being a trader within the bankrupt laws*, with the concurrence of one-third in number and value of his creditors (testified by their signing his petition), to present a petition to the Court of Bankruptcy, setting forth a full account of his debts, the consideration thereof, specifying the time when contracted, and the names, residences, and occupations of his cre-

ditors ; also a full account of his estate and effects, whether in possession, reversion, or expectancy, and of all debts and rights due to or claimed by him, and of all property of what kind soever held in trust for him : and also setting forth that he is unable to meet his engagements with his creditors, and the true cause of such inability ; and also setting forth such proposal as he is able to make for the future payment or the compromise of such debts or engagements ; and that *one-third in number and value of his creditors have assented* to such proposal ; and praying that such proposal (or such modification thereof as by the majority of his creditors should be determined) should be carried into effect under the superintendence of the court ; and that he, the petitioning debtor, should in the meantime be protected from arrest by order of the court.

On the presentation of such petition, one of the commissioners is to examine the petitioning debtor, or any creditor who may join in the petition, or any witnesses produced by the debtor, in *private* ; and if the commissioner shall be satisfied of the truth of the several matters alleged in the petition, and that the debts of such petitioning debtor have not been contracted by reason of any manner of fraud or breach of trust, or without reasonable probability, at the time of contract, of being able to pay the same, or by reason of any judgment in any prosecution for breach of the laws, and that the petitioner has made a full disclosure of his debts and credits, estate and effects, and is desirous of making a *bond fide* arrangement with all his creditors, and that his proposal to that effect is reasonable, and proper to be executed under the direction of the court, the commissioner may direct that a meeting of the creditors shall be convened, notice of which meeting to be given in writing to every creditor not less than seven nor more than twenty-eight days before the same is held.

The commissioner is to appoint a fit person to preside at the meeting, and to report the proceedings. If, at the first meeting, the major part of the creditors in number and value, or nine-tenths in value or nine-tenths in number of those whose debts exceed £20, shall assent to the proposition of the debtor, a second meeting is to be appointed, not less than seven nor more than twenty-eight days after the first, of which notice shall be served on every creditor not present ; and if, at the second meeting, three-fifths of the creditors present in number and value, or nine-tenths in value, or nine-tenths in number of those whose debts exceed £20, shall agree to the arrangement made at the first meeting, and reduce the terms to writing, such resolution shall be binding, provided one full third of the creditors in number and value be present. The commissioner may then, within fifteen days, cause the same to be filed if he think it reasonable, and grant to the petitioner a certificate of protection

against arrest, to be valid except in cases of fraud, concealment of property, or intended flight; and he may also grant a temporary protection while the debtor is under examination.

From the date of the filing of the resolution the estate and effects of the debtor are to vest in the trustee appointed, who is once in every six months, or oftener if required by the commissioner, or any two creditors whose debts amount to one-tenth of the whole, to produce an attested account of all monies and effects of the debtor which have come into his hand, which the commissioner is to examine and certify the result, and, if need be, order payment to the creditors according to the terms of the resolution.

In case of any difficulty arising, a special meeting of creditors may be summoned, which may confirm, alter, or annul any part or the whole of the original resolution, provided not less than one-third in number and value of the creditors attend. When the resolution has been carried into effect, and the creditors satisfied according to its tenor, a final meeting to be held, at which a certificate of release is given by the commissioner to the trustee, and another to the debtor, which affords the same protection and discharge as a certificate under a bankruptcy.

#### V. PERSONS PRIVILEGED FROM ARREST.

Peers of the realm and Irish and Scotch peers, whether representative peers or not; members of parliament and corporations, are privileged from arrest. Also barristers, clerks, attorneys, suitors, witnesses, and all others attending courts of justice. Clergymen, during divine service, and in going and returning therefrom. Administrator or executor, as such, but not if he has personally promised to pay. Ambassadors and their servants. Aliens for debts beyond seas. Bail being about to justify, or otherwise attending court as bail. Bankrupt for forty-two days, unless before in prison, and after forty-two, if the time for surrender be enlarged; also if summoned before the commissioners relative to his estate, though several years after his last examination. Insolvent debtors discharged, unless on a subsequent express promise. Feme-covert; but if she obtain credit pretending to be single, she may be arrested; though if plaintiff knew her to be married, she will be discharged. Creditors attending commissioners of bankrupt to prove a debt; also witnesses attending the Insolvent Court, or courts-martial; serjeants-at-law, bishops, consuls-general, and the marshal of the Queen's Bench are privileged.

#### VI. ARREST OF ABSCONDING DEBTORS.

The preamble to Lord Harrowby's act for this purpose, 14 & 15 V. c. 52, states that the laws in force are too dilatory, that



frauds are perpetrated on creditors residing at a distance from London, by debtors embarking for distant countries from various seaports, and that it is expedient to provide a more efficacious process for the arrest of debtors about to quit England. It then enacts, by s. 1, that after August 1, 1851, commissioners of bankruptcy and judges of county courts, except the county court judges of Middlesex and Surrey, may on the application of a creditor and due proof of affidavit that a debt of *twenty pounds or upwards* is owing and then payable, and that there is probable cause for believing that the debtor, unless he be apprehended, is about to leave England, grant a warrant in a prescribed form for the arrest of the debtor within seven days from the date thereof. Such arrest to continue till the debtor has given bail or made a deposit, or paid the debt and costs endorsed on the warrant, or be otherwise legally discharged. Creditor taking out such warrant must issue a writ of *capias*, or, where no action is pending, first cause a writ of summons to issue out of a superior court, and the ordinary process follows, notwithstanding the defendant's arrest; *capias* must be served within seven days from the date of arrest warrant.

By s. 5, persons arrested upon warrant may, before issuing *capias*, pay the debt and costs endorsed on the warrant to the messenger or bailiff, or enter into bail-bond with two sufficient sureties for the amount, conditioned to put in special bail; or make deposit of the sum endorsed, together with £10 for costs, and thereby be discharged from custody. Before or after arrest, a person may apply to a commissioner of bankruptcy, a county court judge, or to any judge of a superior court, or of the court named in the warrant for his discharge.

Officers are responsible for due execution of warrants, same as sheriff for the execution of *capias*; costs of warrant to be costs in the cause, unless creditor has not good cause for the same.

### *Fees.*

	£	s.	d.
To the attorney, for preparing the affidavit of debt	0	10	0
To the same, for attending to issue the warrant	0	6	8
To the clerk of the county court for issuing a warrant	0	5	0
To the party executing the warrant, for the caption	1	1	0
To the same, for mileage, per mile	0	0	6
To the same, per mile, for conveying debtor to gaol, where he shall be lodged, the further sum of	0	1	0

### VII. RECOVERY OF DEBTS ABROAD.

It is generally believed that persons who quit this country to avoid the payment of their debts may reside in France with im-

punity, conceiving that the French tribunals take cognizance of no suits between persons not subjects of France. This notion is so common, that when a debtor is known to be in France, the creditor foregoes all attempt to enforce his demand, believing himself to be without remedy. It is important to be known, that the notion which is so generally entertained on this subject is erroneous, as numerous instances have occurred of late, where parties living in England have compelled the payment of debts by debtors living in France. The rule of the French law still holds, that a foreigner shall not implead another foreigner before the French tribunals, unless there has been some *decree or judgment of a court declaratory of the right of the claimant*; but it is now well established, that when a judgment or decree has been obtained in any court in England, the French courts will carry into effect the judgment or decree so obtained in England.

It will be understood that the difficulty of enforcing a debt still exists where the debtor has escaped before a proceeding could be taken in this country against him; but after a debtor has once been served with process here, and a judgment obtained here, a French court will give the same effect to the judgment as an English tribunal would if the party were in England.

Under the same circumstances, of antecedent process and judgment in England, it is believed that the laws of Belgium would give the same assistance against an English debtor residing in Belgium.

## CHAPTER XV.

### *Liens.*

A LIEN may be defined a right which one person has to detain the property of another on account of labour expended on that property, or for the general balance of an account due from the owner.

As the common law imposes on certain trades, as innkeepers and carriers, the obligation of accepting all employment offered within the limits of their occupation, so, in return for this obligation, it entitles the party to a particular lien on the property as a remuneration for the trouble and expense incurred in the execution of the purpose for which such property was entrusted.

But the general opinion appears to be, that the right of lien is not confined to those trades which are under an obligation to accept employment from all who offer it; but that the remedy by detention extends to every trade exercised for the benefit and advantage of the community.

Attorneys and solicitors have a lien for their costs on the

papers of their clients; bankers, upon all securities in the way of trade; brokers, factors, and agents, on the property of their principals in possession, or even in the hands of purchasers; masters of vessels, on their cargoes, for wages or necessary repairs, during the voyage; carriers have a lien for the carriage price; innkeepers on the goods and property of their guests, for their food and lodging, and on their horses, for their keeping and stabling; insurance-brokers have a lien for the general balance of their account on the policies effected by them for their principals; lastly, millers, packers, wharfingers, dyers, coach-makers, calico-printers, and others, have all a lien on the goods respectively confided to them in the way of business.

But as the right of lien is admitted for the benefit of trade, it is confined in its operations to trade only. Therefore no lien lies for the pasture of cattle, or the keep of the dog; or where there has been a special agreement to pay a certain sum for workmanship, in which case the owner of the goods on which the labour has been bestowed can only be made *personally* liable.

A right of lien gives no general right to *sell goods*, except where the detention of goods is creative of expense, when the lien is saleable. In case too, of the lien in cattle, it is admitted that they may be worked as the owner would have worked them; so also a cow may be milked.

Under the following circumstances the right of lien cannot be exercised:—

1. If the possession of property has been obtained wrongfully or by misrepresentation.
2. If it has been entrusted solely on the *personal* credit of the owner of the lien, or delivered by an authorised servant or agent.
3. And lastly, no lien can be acquired over property delivered by a bankrupt, or one in contemplation of insolvency.

It is also material to remark, that if the holder of goods accept a specific security in lien, or voluntarily part with the possession of the whole, or part of them, he afterwards loses all right of lien upon them.

## CHAPTER XVI.

### *Bankruptcy.*

A **BANKRUPT** is a trader who, either from the want of sufficient property, or from the pressing difficulty of converting what he possesses into money, is unable to meet those demands of his creditors which the law gives them the power of instantly enforcing, and who has committed some act indicative of the situation in which he is so placed. It is in the latter attribute

that the bankrupt chiefly differs from an insolvent, who may, equally with a bankrupt, be unable to meet the demands upon him, but who has not, by secreting himself from creditors, or other open evasive act, revealed his insolvency to the world.

In the ordinary course of law, creditors may seize either the person or the effects of their debtor, but they cannot take both at the same time; and if they take the body in execution, they cannot afterwards resort to the effects. All the creditors must run through the same process to recover their several debts. By the bankrupt laws, on the contrary, a form of proceeding is allowed, at the instance of one or more of a man's creditors, at the common expense, and for the common benefit of them all. The debtor is at once, by operation of law, divested of all his property, real and personal, which is transferred to trustees either chosen by his creditors or appointed by law. But if the debtor make a full discovery, and appear to have acted without fraud, he then becomes entitled to a complete discharge, both of his person and of any property he may subsequently acquire; and also to a reasonable allowance out of his former effects proportioned to his good conduct, and the amount of the dividend which his estate yields to his creditors.

Of late years the Bankrupt Laws have undergone much inquiry and discussion, and attempts have been made to improve this complicated branch of mercantile jurisprudence. In 1825, the great mass of statutes on the subject were consolidated, and several new and salutary provisions introduced: among others, that which allowed the proof of contingent debts; that which allowed all debts to bear interest in the event of a surplus; that which allowed the tender of a composition; and that which allowed a trader in insolvent circumstances publicly to declare it, whereby steps might be taken to secure an equitable distribution of his property to all his creditors.

In 1831 was introduced the 1 & 2 W. 4, c. 56, for lessening the expense, delay, and uncertainty in bankruptcy proceedings. This act established a court of bankruptcy, by abolishing the seventy commissioners of bankrupts, and the substitution of ten judges in their places, with registrars, clerks, &c. Various other alterations of importance were adopted. 1. The substitution of a *fiat* from the Lord Chancellor, in lieu of the petition of bankruptcy. 2. The appointment of official assignees of the bankrupt's estate. 3. The allowing of all attorneys and solicitors to practise in the Bankrupt Court, and debts to be proved by affidavit. 4. The appointment of fixed commissioners, on the nomination of the judges of assize, to adjudicate bankruptcy business in the country. And 5, allowing assignees to employ the bankrupt in the arrangement of the estate, and refer any matter to arbitration, and the reference by them to be made a rule of court.

Despite of these and numerous subsequent amending statutes, the bankrupt laws proved wholly inadequate to the due protection of mercantile credit, and by secret transfers, concealment of property, or other fraudulent devices, the chief bulk of the bankrupt's effects continued to vanish from the grasp of the law. In consequence the subject was again urgently pressed on the attention of the Legislature by the higher classes of the commercial world, and the result, after anxious and protracted inquiry, was the act of 1849, the 12 & 13 V. c. 106. The improvements introduced by this act are many and important, and which may be briefly recapitulated.

First, the simplification of the process in bankruptcy by substituting a petition for a fiat. Secondly, a saving of time and expense, which will be effected by conferring upon the commissioners original jurisdiction in certain matters that had been only cognizable by one of the vice-chancellors sitting at Lincoln's Inn. Thirdly, the useful clauses facilitating the winding-up of insolvent estates out of court. Fourthly, the careful classification introduced of the various cases of commercial delinquency. And, lastly, the classification of certificates of conformity.

For the first time, a broad distinction has been drawn by law between honest and fraudulent debtors. Traders who, at an early period of their insolvency, place their affairs before their creditors, and obtain their assent to such propositions as they are able to make, can obtain protection for their persons, and can wind up their affairs, either by trustees, without the interference of the court, or under control of the court with the aid of an official assignee, but in either case *without the stigma of bankruptcy*; but, if bankruptcy cannot be avoided, then, after hearing the case and judging of the conduct of the bankrupt during his examinations, it is left to the commissioner of the court to grant either a *first-class* certificate, which declares that the trader's inability to pay his debts has arisen from misfortune only, or a *second-class* certificate, in which it is declared to have arisen partly from misfortune, or a *third-class*, in which it is declared not to have arisen from misfortune. These discriminations of the debtor's conduct appear of greater importance to society and the morality of trade than any other portion of the act.

After these preliminary explanations, the present state and administration of the bankrupt laws may be set forth under the statute and the laws unrepealed by it. By section 2, the present act is to be cited, and called "The Bankrupt Law Consolidation Act, 1849." It does not extend to Scotland or Ireland, except when expressly provided; and it took effect from October 1, 1849, unless when otherwise specially provided.

1. *Court of Bankruptcy.*
2. *Persons liable to Bankruptcy.*
3. *Acts of Bankruptcy.*
4. *Declaration of Insolvency.*
5. *Liabilities of Members of Parliament.*
6. *Petition for Bankruptcy Adjudication.*
7. *Bankruptcy of Joint Stock Companies.*
8. *Proceedings under Adjudication.*
9. *Debts provable under Bankruptcy.*
10. *Official Assignees.*
11. *Creditor Assignees.*
12. *Property liable in Bankruptcy.*
13. *Surrender and Examination of Bankrupt.*
14. *Payment of Dividends.*
15. *Certificate and Allowance.*
16. *Composition with Bankrupt.*
17. *Arrangements under Court or by Deed.*
18. *Offences against Bankrupt Laws.*
19. *Fees and Salaries.*

#### 1. COURT OF BANKRUPTCY.

The general constitution of the court remains unaltered, and consists of a chief judge, who is a vice-chancellor, and appointed by the Lord Chancellor, of a chief registrar, and commissioners. The office of Lord Chancellor's secretary of bankrupts was abolished in 1852, by 15 & 16 V. c. 77, and his duties annexed to those of the chief registrar in bankruptcy, assisted by a chief clerk. The commissioners form subdivision courts for determining matters referred to them; each commissioner also sits singly in a court of his own. All references or adjournments by a single commissioner to a subdivision court must be to the subdivision court to which he belongs. The examination of any bankrupt or other person, or of a proof of debt, may be adjourned by a single commissioner to a subdivision court; and disputed debts, if all parties consent, may be tried before a jury.

Both the judges and commissioners have power, in all matters within their respective jurisdiction, to take the whole or any part of the evidence, either *vivâ voce* on oath, or upon affidavit sworn before one of themselves, or a master in chancery. The subdivision courts may sit either in public or private. The registrars and deputy registrars are appointed by the Crown, and attend on and assist the judges and commissioners. Judges, commissioners, and registrars, are restrained from practising as barristers, solicitors, and attorneys, and from sitting in the House of Commons.

The jurisdiction of the London commissioners extends to

forty miles round London: for the transaction of bankruptcy business beyond this distance, permanent commissioners are appointed in the country; they are nominated by the judges of assize from barristers and solicitors practising in the counties, and approved by the Lord Chancellor. To them all fiats, not within the limit of the metropolitan district, are to be directed in rotation.

Decisions of the vice-chancellor are in certain cases subject to appeal to the Lord Chancellor.

The yearly salaries are, to a judge of the Court of Bankruptcy, £2500; to each of the commissioners acting in the city of London, £2000; to each of the commissioners acting in the country, £1800; to each registrar of the court, £1000; to each deputy-registrar acting in the city of London, £800; to each deputy-registrar acting in the country, £600; and the Lord Chancellor may direct retiring pensions to any of these officers, as he may see fit; namely, to a judge of the court a yearly pension not exceeding £1500; to a commissioner appointed under 1 & 2 W. 4, £1200; to a commissioner under 5 & 6 V. c. 122, £1000. The salary of the accountant in bankruptcy is £1500 a year, with such additional sums as the Lord Chancellor shall direct for the payment of salaries to clerks to the accountant or to the registrars acting in Basinghall Street, such clerks to be increased or reduced by the Lord Chancellor, as circumstances may require.

## II. PERSONS LIABLE TO BANKRUPTCY.

Generally all persons *in trade* capable of making binding contracts, whether natural-born subjects, aliens, or denizens, may be made bankrupts; but the statute expressly mentions bankers, brokers, scriveners, ship-insurers, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, or coffee-houses; dyers, printers, bleachers, fullers, calenderers, cattle or sheep-salesmen, livery-stable-keepers, coach-proprietors, carriers, shipowners, auctioneers, apothecaries, market-gardeners, cowkeepers, brickmakers, alum-makers, lime-burners, millers, factors, agents, and all persons who use the trade of merchandize, by bargaining, bartering, commission, consignment, and otherwise; and all persons who seek their living by buying and selling, letting for hire, or by the manufacturing of goods and commodities, are liable to be made bankrupts. Persons not liable are farmers, graziers, labourers, workmen for hire, and receivers-general of taxes; nor is any member of or subscriber to any incorporated commercial or trading company, established by charter or act of parliament, liable as such to become bankrupt.

A *clergyman*, if a trader, may be made a bankrupt; or a dealer in smuggled goods; or a ship-broker as such; or an

executor, or trustee, trading for the benefit of another: but not an infant, nor a lunatic, nor a married woman, unless she be a *sole* trader, according to the custom of London, or according to articles of separation, or the husband be transported, 1 *Atk.* 199; 6 *Bing.* 734.

A shareholder in a joint-stock banking company, established under 7 G. 4, c. 46, and 1 & 2 V. c. 96, is a trader within the bankrupt laws, unless where he has purchased shares for the purpose of bringing himself within their operation, *Exp. & re Hall*, 405.

A party who lets furnished lodgings is not a trader within the bankrupt laws, notwithstanding he buys the furniture for the purpose of being let with the lodgings, 1 *Dea.* 99.

An attorney, in the common course of his profession, cannot be made a bankrupt. Nor the proprietor of a coal-mine, selling coals; or of a stone-quarry, selling stones. Neither can any public officer, in respect of his office, be made a bankrupt; nor one who buys or sells under particular restraint, as a school-master who buys books to sell to his scholars, or a contractor for victualling the army.

A single act of buying or selling is not sufficient to bring a person under the bankrupt laws; whether a man be a trader, within the statute, is a question, not of *fact* but of *law* upon the *fact*, *Cowp.* 572. A trading to support a commission, depends not upon the quantity but the *intention*; and it is a question for a jury whether there be enough of evidence that intention.

By 9 Anne, c. 12, no trader within the bankrupt laws is exempt therefrom, by placing himself in the service of an ambassador or public minister.

### III. ACTS OF BANKRUPTCY.

Any act *intended* to delay or defraud creditors is an act of bankruptcy; such as a trader leaving the country, concealing himself from his creditors, causing himself to be arrested, or his goods and chattels attached, or taken in execution; making any fraudulent conveyance, gift, or delivery of lands, tenements, or chattels, with intent to defraud his creditors.

Any trader not paying, securing, or compounding for a judgment debt, upon which the plaintiff might sue out execution, within seven days after notice requiring payment; or disobeying any decree or order of any court of equity, or order in bankruptcy or lunacy, for payment of money, after the service of an order for payment on a peremptory day fixed, to be deemed to have committed an act of bankruptcy.

If the bankrupt shall not have proceeded to dispute the fiat within prescribed times, or not proceeded with due diligence and effect, the *Gazette* is to be conclusive evidence of the bank-



ruptcy, in all suits brought by the assignees against persons whom the bankrupt might have sued but for such bankruptcy.

A trader making an assignment, by deed, of *all* his estate and effects, for the benefit of *all* his creditors, is not an act of bankruptcy, unless a petition for bankruptcy adjudication be filed within *three months* from the execution of such assignment: provided that the assignment is attested by an attorney or solicitor, and executed by every trustee within fifteen days, and that notice of such assignment be given, within *one month*, in the *London Gazette*, and two London daily papers, if the trader reside within forty miles of London; and, if not, notice must be given in the *Gazette*, in one London daily paper, and the nearest provincial newspaper.

Traders held in prison for debt for the period of twenty-one days, or, being arrested, make their escape out of prison or custody, commit acts of bankruptcy; but in the first case it must be a *lawful* arrest and commitment for debt.

A trader beginning to *keep house*, by denying himself to a creditor, when at home, is an act of bankruptcy. But not if the denial be on Sunday, nor at eleven o'clock at night, nor if done to avoid interruption at dinner time, *Smith v. Currie*, 1 Rose, 364.

A sale of goods at such a price, and under such circumstances, that the buyer must reasonably know that the seller is raising money to defraud his creditors, is an act of bankruptcy, and the assignees may recover the value of the goods from the buyer, *Cook v. Caldecott*, 1 M. & M. 522.

The filing of a petition, in order to take the benefit of the Insolvent Act, is an act of bankruptcy; and if a commission be issued before the time appointed by the court for hearing the petition, or any time within two calendar months from the filing thereof, such commission makes void any assignment made in pursuance of the insolvent law. So is the filing a petition under the act for an arrangement between a trader debtor, and his creditors.

A creditor making affidavit of his debt, and of his having given notice to the trader of the particulars of his demand, the court may summon the trader; if he does not, within *seven* days after, attend the summons, or refuse to admit the demand, or compound or give bond or security, it is an act of bankruptcy, provided a petition be filed within two months after the filing of the affidavit. Traders giving an admission, and not within seven days paying, securing, or compounding, have committed an act of bankruptcy. So is the admitting a part of a demand, and not paying or compounding for the same. Court may enlarge time for admission. Admissions may be signed elsewhere than in court, if attested by trader's attorney. If creditor bring an action and do not recover to the amount

sworn to in his affidavit, the defendant entitled to costs, 12 & 13 V. c. 106, ss. 58, 78-86.

No person is liable for any act of bankruptcy committed above twelve months prior to the issue of a fiat, or the filing of a petition.

The 3 G. 4, c. 39, ss. 1 & 2, *to prevent Frauds upon Creditors, by secret Warrants of Attorney to confess Judgment*, enacts, that when a commission of bankruptcy shall issue against a person who has given a warrant of attorney, any time after the expiration of twenty-one days next after the execution of such warrant of attorney, such warrant of attorney shall be deemed fraudulent and void against the assignees, unless the warrant of attorney, or copy thereof, shall have been filed within twenty-one days next after the execution thereof, in the Court of Queen's Bench, together with an affidavit of the time of execution, or unless judgment shall have been signed or execution issued within the same period of twenty-one days. By section third every *cognovit actionem* is to be filed in like manner, or otherwise to be void against creditors.

#### IV. DECLARATION OF INSOLVENCY.

If any trader file a declaration in the office of the Chief Registrar, stating that he is insolvent, or unable to meet his engagements, such declaration, after advertisement in the *Gazette*, is an act of bankruptcy. But no commission can issue thereupon, unless it be sued out within two calendar months next after the insertion of such advertisement; nor unless such advertisement have been inserted in the *Gazette* within eight days after such declaration was filed; and no docket can be struck upon such act of bankruptcy before the expiration of four days next after the insertion of such advertisement, in case such commission is to be executed in London; or before eight days after such insertion, in case such commission is to be executed in the country; and the *Gazette* containing such advertisement is evidence to be received of such declaration having been filed.

The declaration being concerted between a creditor, or any other person, does not render void the commission of bankruptcy.

But if a trader, after docket struck against him, pay to the person who struck the same any money, or gratuity, whereby he receives more in the pound, in respect of his debt, than the other creditors, such payment or gratuity is an act of bankruptcy; and if any fiat have issued, the lord chancellor may declare it valid, or order it to be annulled; and the person receiving such consideration *forfeits his whole debt*, and shall repay the whole money or gratuity he received, for the benefit of the creditors of the bankrupt.

## V. LIABILITIES OF MEMBERS OF PARLIAMENT.

Privilege of parliament does not protect from a fiat of bankruptcy, and persons, acting under the fiat, may proceed thereupon, in the same manner as against any other bankrupt; but members cannot be *arrested* or *imprisoned* during the time of such privilege, except in cases made felonies or misdemeanors by the act.

If any creditor, to the requisite amount, of any trader having parliamentary privilege, file an affidavit in any court of record in Westminster, that such debtor is a trader within the act, and sue out a summons; then, if such trader, within *one calendar month* after personal service of the summons, do not pay, secure, or compound for such debt, to the satisfaction of the creditor, he is deemed to have committed an act of bankruptcy.

Members of parliament not paying conformably to the order or decree of a court of equity are guilty of an act of bankruptcy.

The 52 G. 3, c. 144, makes some important provisions for depriving members of the House of Commons of their seats, who become bankrupt, and do not, within a limited period, pay their debts in full. Under this act a member is declared utterly incapable of sitting and voting in the House of Commons, during twelve calendar months from the issuing of the commission, unless, within the said period, such commission be superseded, or the creditors of such member, proving under the commission, be paid, or satisfied to the full amount of their debts under the commission.

By the second section, if within twelve calendar months the commission be not superseded, nor the debts satisfied, in the aforesaid manner, the commissioners certify the same to the Speaker of the House of Commons, and thereupon the election is declared void; and, fourteen days' notice having been previously inserted in the *Gazette*, the Speaker may issue his warrant to the Clerk of the Crown, to make out a new writ, for electing another member, in the room of such member who has so vacated his seat.

Another *disqualification* arising out of bankruptcy, may be mentioned under this head. By the 1 G. 4, c. 100, s. 5, no person who has been a bankrupt, or taken the benefit of any insolvent act, or compounded with his creditors, and not paid twenty shillings in the pound, is eligible to be a commissioned officer in the London militia. Penalty for serving under such disqualification, £100.

## VI. PETITION FOR ADJUDICATION.

The proceeding for an adjudication of bankruptcy is by petition to the court, the petitioning creditor having filed an affi-

davit of the amount of his debt, and of the act of bankruptcy. The suit is then prosecuted in the Court of Bankruptcy, without any fiat, commission, or special authority, if instituted in the metropolitan district, or before country commissioners if in the provinces. Petition must be presented and filed in the court of the district in which the trader has resided or carried on business six months next before petition. A trader may petition for an adjudication against himself.

If adjudication be not obtained by the petitioning creditor within three days, the court may authorize the application of any other qualified creditor within fourteen days, and adjudicate thereon.

Any person against whom a fiat has been issued may be arrested, and his books, papers, &c., be seized on a warrant from the court, to be obtained on proof of *probable cause for believing that he is about to quit England, or to remove or conceal his goods*; but any one so arrested may apply to the court for an order on the petitioning creditor to show cause why he should not be discharged, and his books, &c., be restored, and the court may decide, directing the costs to be paid by either party as they see fit.

The petitioning creditor sues at his own cost, until the appointment of assignees, and an order of court obtained to reimburse him out of the effects.

No adjudication issues unless the debt of the petitioning creditor, or two or more persons being partners, petitioning for the same, amount to £50 or upwards; or of two creditors to £70 or upwards; or unless the debts of three creditors or more amount to £100: and every person who has given credit to any trader, upon valuable consideration, for any sum payable at a certain time, which time had not arrived when such trader committed an act of bankruptcy, may join in petitioning, *whether or not he have any security in writing, or otherwise, for such debt.*

Petitioning creditors may obtain an adjudication against one or more partners in a firm, to the exclusion of the rest; and in every commission against two or more persons, the court may supersede the commission against one or more of them, without affecting its validity against the rest.

In the adjudication against one partner, the other being solvent, the separate estate of the bankrupt must be applied to his separate creditors exclusively, *ex parte Yonge*, 2 V. & B. 39. But the solvent partner is entitled to prove the loss which each partner ought to have borne, as a debt against his separate estate, 4 *Mod.* 477. But, where there is no joint estate or solvent partner, joint creditors may prove under a separate commission. Bankrupt to have notice of adjudication before advertisement in the *Gazette*, and to be allowed seven days, or

extended time not exceeding fourteen days, to show cause against the adjudication.

No commission of bankruptcy can be superseded, nor adjudication reversed, by reason of its being concerted between the petitioning creditor and the bankrupt. Creditors as well as debtors may get up a commission, or arrest an insolvent in a friendly manner, that the estate may be equally divided by the operation of the bankrupt or insolvent acts.

By 17 & 18 V. c. 119, s. 20, a trader petitioning for adjudication of bankruptcy against himself, must establish assets to the amount of £150.

#### VII. BANKRUPTCY OF JOINT-STOCK COMPANIES.

In the session of 1844 an act passed for facilitating the winding-up of the affairs of joint-stock companies, unable to meet their pecuniary engagements; and the 7 & 8 V. c. 111, provides that if any incorporated commercial or trading company, or any other body of persons associated together for commercial or trading purposes, shall commit an act of bankruptcy, a fiat may issue, and be prosecuted in like manner as against other bankrupts; but the bankruptcy of a company not to involve the bankruptcy of any member individually. The court may order the directors of a company adjudged bankrupt to prepare a balance-sheet and accounts, and to make oath of the truth thereof; and may direct an allowance out of the estate for the preparation of the same; the person so ordered to stand in precisely the same relation to the court as any other bankrupt. It may also direct the assignees to petition the Court of Chancery for directions for winding-up the affairs of the company; upon which petition an order of reference may be made, and accounts taken; and upon the confirmation of the master's report a receiver may be appointed. The Court of Chancery may also make orders in cases of individual claims of members on each other in respect of the transactions of the company, and as to the settling and enforcing contributions from the members of the company.

Previous to passing the last examination the Court of Bankruptcy shall inquire into the cause of the failure of the company; and after the last examination cause a copy of the balance-sheet to be sent to the Board of Trade, and give in writing the opinion of the court as to the cause of the failure of such company; the queen, upon the recommendation of the Board of Trade, may then revoke any privileges granted to the company, and determine the same, notwithstanding any charter, letters-patent, or act of parliament: the Board of Trade may also institute prosecutions by the Attorney-General in such cases as they may deem fit. But until the dissolution of the company

by the crown, it shall be considered as subsisting for its original purposes, and notwithstanding the dissolution in any other manner, the company shall subsist so long as any matters remain unsettled.

This act is amended by 11 & 12 V. c. 45, and 12 & 13 V. c. 108.

#### VIII. PROCEEDINGS UNDER ADJUDICATION.

The bankrupt to have notice of adjudication before advertisement in the *Gazette*, and to be allowed seven days, or extended time not exceeding fourteen days, to show cause against the adjudication, and if the petitioning creditor's debt, the trading, or the act of bankruptcy appear to be insufficiently established, the adjudication to be annulled; if cause is not shown, the notice is to be advertised, and sittings appointed for the surrender of the bankrupt, the last of which sittings shall be not less than thirty or more than sixty days from the date of the advertisement, but, with the consent of the bankrupt, the adjudication may be advertised sooner; the bankrupt is to be free from arrest in coming to surrender, and, after such surrender, for such time as shall be allowed by the court (by endorsements on the summons) for finishing his examinations, and after, until his certificate be allowed and confirmed; any officer arresting and detaining a bankrupt who shall have shown his summons, to forfeit £5 for every day's detention to the use of the bankrupt.

Commissioners are empowered to summon persons, examine them upon oath, and call for any deeds, papers, or documents, which appear necessary to establish the trading and act of bankruptcy; and, upon full proof of the petitioning creditor's debt, of the trading, and act of bankruptcy, shall adjudge the debtor a bankrupt.

No bankrupt proceeding abates by reason of the demise of the crown, the death of the commissioner, or of the bankrupt himself, *after* adjudication.

Persons, by warrant of the commissioners, may break open any house, chamber, shop, warehouse, door, trunk, or chest of any bankrupt, and may seize upon the body or property of such bankrupt; and, if the bankrupt be in prison or in custody, they may seize any property (necessary wearing apparel only excepted) in the possession of such bankrupt, or any other person. These powers, except as to the seizure of the *person*, extend to Scotland and Ireland, when the warrant is backed by the proper magistrate of those countries respectively.

Warrants issued must be under the hand and seal of one of the commissioners, and every summons be in writing under the hand of a commissioner. Parties keeping out of the way to avoid a summons, after due diligence has been used to effect a

personal service, may be served by endorsing the summons, and delivering the same to a wife, servant, or adult inmate of the house or last-known place of abode of the party to whom such summons is directed; such service to be deemed as effective as if delivered in person, 5 & 6 V. c. 122, ss. 79, 80.

Justices of peace may grant a warrant to search any house or premises not belonging to the bankrupt, on suspicion of property being concealed there; and persons executing such warrant are entitled to the same protection as is allowed by law in the execution of a search warrant for property reputed to be stolen and concealed.

Persons known, or suspected, to have any of the bankrupt's property in their possession, refusing to attend on the summons of the commissioners, may be apprehended; and if they refuse to answer properly such interrogatories as are propounded, or if they refuse to surrender any deeds, documents, or papers, required of them, without lawful excuse, they may be imprisoned till they submit.

Persons summoned are entitled to their expenses; and every witness shall have his expenses tendered to him, in the same manner as is required upon service of a subpoena to a witness in an action at law. Persons attending, whether summoned or not, are free from arrest during such attendance, and also in going and returning. So, also, is a creditor attending to prove his debt, *List's Case*, 2 N. & B. 373.

Bankrupts refusing to attend at the appointed time may be apprehended; and if they refuse to answer upon oath any questions touching their trade or property, or any grant or conveyance thereof, they may be committed to any prison the commissioners think fit. The wife of the bankrupt may be also examined, or, on refusal, committed. Jailors suffering any person to escape, committed by warrant of commissioners, to forfeit £500.

Court may order that for a period of *three months* from the date of such order all *post letters* addressed to the bankrupt at the place described in the petition for adjudication shall be re-directed, sent, or delivered to the official, or other assignee, or other person named in the order, 12 & 13 V. c. 103, s. 124.

#### IX. DEBTS PROVABLE UNDER BANKRUPTCY.

Creditor may prove his debt by oath sworn; or, if the creditor live out of England, by affidavit sworn before a magistrate, attested by a notary public, British minister or consul: but the creditor is subject to such rules and orders touching personal attendance to prove his debt, as is accordant with the existing practice in bankruptcy.

Incorporated bodies may prove their debts by an agent duly

authorized, and one partner may prove on behalf of the firm, 19 *Ves.* 293.

*Friendly Societies.*—If bankrupt be an officer of, and have monies, effects, deeds, or securities of, a friendly society, court may order the delivery or payment before any of his other debts are satisfied.

*Servants' Wages.*—When a bankrupt is indebted, at the time of issuing the fiat, to any servant or clerk, in respect of wages or salary, the commissioners may order to be paid so much as shall be so due, not exceeding *three months' wages*, nor more than £30, and to any workman any sum due not above £2: such clerk or workman being at liberty to prove under the commission for any sum exceeding such amounts.

*Apprentices.*—The issuing of the fiat discharges any indenture of apprenticeship to the bankrupt; and, in case a premium has been received with an apprentice, the commissioners may direct a part to be repaid, for his use, proportioned to the term of the apprenticeship unexpired.

*Set-off Debts.*—When there are mutual debts between the bankrupt or any other person, they may be set-off one against the other, and the balance, if any, made provable against the estate of the bankrupt.

Any debt upon bill, bond, note, or other negotiable security, or where credit has been given upon *valuable consideration*, though not due at the time the act of bankruptcy was committed, is provable. So, if any person have been surety or bail for any debt of the bankrupt, and has paid the whole or part thereof, he is entitled to prove his demand in respect of such payment, and may receive dividends with the other creditors.

Interest on bills of exchange and notes over-due is provable up to the date of the commission.

The obligee in any bottomry or respondentia bond, and the assured in any policy of assurance, may, after the loss or contingency has happened, claim under the commission. So may any annuity creditor prove for the value of his annuity, regard being had to the *original cost* of such annuity.

No creditor who has brought any action against the bankrupt for a demand prior to the bankruptcy, can prove a debt without relinquishing such action; and, in case the bankrupt be in prison, at the suit of such creditor, he cannot prove his debt without authorizing the discharge of the bankrupt; but the creditor is not liable to the costs of the action so relinquished by him.

When it appears to the assignees, or to two or more creditors, who have each proved debts to the amount of £20 or upwards, that any debt is not justly due, in whole or in part, they may so represent it to the commissioners, who, on examination, have



power to disallow the whole or part of such claims; but in such case, the assignees, or complaining creditors, are liable to the costs of such application.

The Statute of Limitations bars the proof of any debt, though the bankrupt admit the debt, 2 *Rose*, 245. But in an action by the assignees against a debtor to the bankrupt, it has been held he cannot object that it did not appear £100 of the petitioning creditor's debt had been contracted within *six years* before the issuing of the commission, C. P. 3 *Bing*. 285.

Creditors who have proved to the amount of £20. may, if dissatisfied with the settlement of attorney's bills by the commissioners, have them settled by a master in Chancery, who for such settlement receives 20s.

#### X. OFFICIAL ASSIGNEES.

These must be merchants, brokers, accountants, or persons who are or have been in trade in London or the vicinity. An official assignee in every bankruptcy prosecuted in the Court of Bankruptcy, is to act with the assignees chosen by the creditors. All the real and personal estate of the bankrupt, all the monies, stock in the public funds, exchequer bills, securities, and the proceeds of sale, are transferred and vested in the official assignee, subject to the direction of the court. Each official assignee gives security, and may act, prior to the choice of assignees by the creditors, as *sole* assignee of the bankrupt's property. But the official assignee cannot interfere with the creditor's assignees in the appointment or removal of a solicitor, or in directing the time and manner of the sale of the bankrupt's effects. The remuneration of the official assignees for their trouble is at the discretion of the court, and proportioned to the estate of the bankrupt, and the duties discharged.

Persons, being merchants, brokers, or accountants, are appointed by the lord chancellor to act as official assignees in all bankruptcies prosecuted in the country, to act with the creditors' assignees; the official assignees, however, not to interfere with the creditors' assignees in the appointment of the solicitor chosen by them, or in directing the time and manner of disposing of the bankrupt's estate and effects.

Fourteen days before a final dividend is advertised under any bankrupt's estate, a debtor and creditor account is to be furnished by the official assignee to the creditors' assignee, and to any creditor who may apply for the same, and to *any other person*, not being a creditor, upon payment of such sum, not exceeding two shillings and sixpence, as shall be fixed by the court.

## \*XI. CREDITOR ASSIGNEES, THEIR DUTIES AND POWERS.

At the first public sitting appointed by the court under any bankruptcy, assignees are to be chosen; and all creditors who have proved debts to the amount of £10 and upwards are entitled to vote; and also any person authorized by letter of attorney: the choice of assignees to be made by the major part in value of the creditors; but the court has power to reject any person who appears unfit; and, upon such rejection, a new choice must be made.

When only one or more partners of a firm are bankrupt, a creditor to the *whole* firm is entitled to vote in the choice of assignees, and to assent to or dissent from the certificate; but such creditor not to receive any dividend out of the separate estate of the bankrupt till all the other creditors are paid the full amount of their debts, unless he be a petitioning creditor.

The commissioners, on stating their reasons, in writing, may appoint a provisional assignee until assignees be chosen by the creditors.

The assignees, with the consent of the major part in value of the creditors, at a public meeting, may compound with any debtor to the bankrupt, or may give time or take security for the payment, or may submit any dispute to arbitration; and if *one-third* in value of the creditors do not attend to give their consent, the same may be done with the authority of the commissioners.

Assignees to keep an account, wherein to enter all property received by them, and all payments on account of the bankrupt, which account every creditor may inspect at seasonable times; and the commissioners may, at all times, summon the assignees before them, and require them to produce all books, papers, deeds, and other documents relating to the bankruptcy in their possession; and if they do not come at the time appointed, the commissioners may, by warrant, cause such assignees to be brought before them; and upon their refusing to produce such books, deeds, writings, or documents, they may commit the party to prison, there to remain without bail, until they submit to the commissioners.

The commissioners, at the meeting appointed for the last examination of the bankrupt, to appoint a public meeting, not sooner than four calendar months from the issuing of the fiat, nor later than six calendar months from the last examination of the bankrupt, of which they must give twenty-one days' notice in the *Gazette*, to audit the account of the assignees; and the assignees to deliver, on oath, a true statement, in writing, of all monies received and paid by them; and the commissioners may examine the assignees touching the truth of such account;

and in such account the assignees to be allowed all reasonable expenses.

Assignees employing the money of the bankrupt for their own advantage, to be charged £20 per cent. interest.

The proceeds of the estate of the bankrupt are not to be deposited in any banking-house, or place in which any assignee, commissioner, or solicitor to the commission is interested.

## XII. PROPERTY LIABLE UNDER BANKRUPTCY.

The assignees are vested with the whole personal estate of the bankrupt, as well as with whatever property he may purchase, or which may revert, descend, or be devised to him, before he obtain his certificate. Also, with all lands, tenements, and hereditaments, in England, Scotland, Ireland, or in any colony or plantation in her majesty's dominions. And the commissioners may, by deed, make sale of any real property whereof the bankrupt is seised, of any estate-tail in possession, reversion, or remainder (except the reversion or remainder is in the crown), and the sale be good against the bankrupt, the issue of his body, and against all persons claiming under him after he became bankrupt, and against all whom the bankrupt by fine, common recovery, or other means, might cut off from any future interest. Lastly, the commissioners may dispose of any copyhold or customaryhold land; the purchaser compounding with the lord of the manor for any fines or services, prior to being admitted into possession.

All property which the bankrupt has in right of his wife passes to the assignees, except such as is settled to her own sole benefit.

If the bankrupt has granted or pledged any property, or deposited any deeds, upon condition of redemption at a future day, the assignees, before the time of the performance of such condition, may tender payment of the money, in the same way as the bankrupt might have done, and dispose of the property for the benefit of the creditors.

If any bankrupt, *being at the time insolvent* (except upon the marriage of his children, or for a valuable consideration), have conveyed to his children, or any other person, any property, leases, or chattels; or made over any bills, bonds, notes, or other securities; or have transferred his debts to any other person, the commissioners have power to receive, sell, or dispose of the same.

*Rent and Leases.*—No distress for rent, after an act of bankruptcy, is valid for more than a YEAR'S RENT, but the landlord may prove under the commission for the residue.

A bankrupt entitled to any lease, if the assignees accept the same, is not liable to pay any rent after the date of the commis-

sion; and if the assignees decline the same, he is not liable, in case he deliver up the lease to the lessor within fourteen days after he have notice that the assignees have declined.

All powers vested in a bankrupt, which he might legally execute for his own benefit (except the right of nomination to a vacant ecclesiastical benefice), may be executed by the assignees for the benefit of the creditors. A benefice *not vacant*, the right of presentation may be sold under the commission.

All property which the bankrupt holds in trust, whether real or personal, may, on petition of the parties interested, be conveyed in trust to such other person as the lord chancellor may appoint.

### XIII. SURRENDER AND EXAMINATION OF BANKRUPT.

A bankrupt not surrendering and submitting to be examined before 3 o'clock on the day appointed, or at the hour and upon the day allowed him for finishing his examination, and of which notice has been given him (having no lawful impediment provable to the satisfaction of the court), or not making discovery of his estate and effects; or not delivering up his estate and effects, except the necessary wearing apparel of himself, his wife, and children; or concealing or embezzling any part of his estate, to the value of £10 or upwards, or any books, papers, &c.,—to be deemed guilty of *felony*, and liable to transportation for life or not less than seven years, or to imprisonment with or without hard labour for any term not exceeding seven years.

The court is authorised to enlarge, if it see fit, the time for the bankrupt to surrender; but the order of enlargement to be made six days at least before the previously-appointed day.

After an act of bankruptcy, any bankrupt destroying or falsifying his books, &c., with intent to defraud his creditors, is to be deemed guilty of a misdemeanor, and subject to imprisonment for any term not exceeding *three years*, with or without hard labour; and if, *within three months* of his bankruptcy, he shall have obtained any goods or credit under false pretences, or shall have removed or concealed any goods, knowing them to have been so obtained, such act to be deemed a misdemeanor, and subject him to imprisonment for any term not exceeding two years, with or without hard labour. Prosecutions against bankrupt for any offence may be ordered by the court acting under the fiat.

The commissioners may make an allowance for the support of the bankrupt and his family until he have passed his last examination.

The bankrupt is required to attend the assignees at all reasonable times, to assist in making out his accounts: he may

also inspect his books and papers in the presence of his assignees, and bring with him any two persons to assist him till the period allowed for examination has expired; and after he has obtained his certificate, he shall, upon demand in writing, attend the assignees, to settle any accounts between his estate and any debtor or creditor; or attend any court of record to give evidence touching the same, or do any act necessary for getting in the said estate, for which attendance he shall be paid 5s. per day; and if he shall, after such demand, not attend, or on such attendance refuse to do any of the matters aforesaid, without sufficient cause, the commissioners may, by warrant, cause such bankrupt to be apprehended, and committed to such prison as they shall think fit, there to remain till he conform, to their satisfaction, or that of the lord chancellor.

Assignees may, with the approbation of a Subdivision Court, appoint the bankrupt to *manage the estate*, or carry on his trade for the benefit of the creditors.

The bankrupt is free from arrest and imprisonment in coming to surrender, and till the expiration of the time appointed for his examination. Officers arresting a bankrupt during this period to forfeit to his use £5 for every day they detain him in custody.

Previously to the last examination bankrupt to prepare a balance sheet and accounts, and file the same in court, and deliver a copy to the official assignee ten days at least before; such balance sheet and accounts may be amended from time to time as the court directs; oath to be made by bankrupt to truth of the balance sheet and accounts; allowance to be made for performing the same.

The commissioners, at the time appointed for the last examination, may adjourn such examination; and the bankrupt be free from arrest during that time, provided it does not exceed three calendar months.

Bankrupts in prison or custody, under any process, may be brought up, by warrant of the commissioners, for examination.

Persons wilfully concealing any property of the bankrupt, and not discovering it within forty-two days after fiat or petition filed, to forfeit £100, and double the value of the property concealed; and any person, after the time allowed to the bankrupt, voluntarily discovering any part of the bankrupt's effects, not before come to the knowledge of the assignees, is allowed five per cent. thereupon, and such further reward as the major part in value of the creditors award.

By 17 & 18 V. c. 119, the excepted articles allowed to a bankrupt, furniture, tools, &c., not to exceed the appraised value of £20.

## XIV. PAYMENT OF A DIVIDEND.

After the last examination, the court, when it thinks fit and there are assets, may appoint a public meeting, of which twenty-one days' previous notice shall be given in the *Gazette*, to make a dividend, at which meeting all creditors who have not proved may prove their debts; and, at such meeting, the court shall forthwith order such part of the net produce of the bankrupt's estate to be shared among such creditors as have proved, in proportion to their respective debts; but no dividend to be declared unless the accounts of the assignees have been first audited.

If the bankrupt's estate is not wholly divided upon the first dividend, the court shall, within eighteen months from the issuing of the fiat, appoint a public meeting, of which twenty-one days' previous notice has been given in the *Gazette*, to make a *second* dividend, when all creditors who have not proved, may prove their debts. Such second dividend to be final, unless some process of law be pending, or some part of the property of the bankrupt may afterwards come to the assignees, in which case they must, within two calendar months after the same is converted into money, divide the proceeds among the creditors. Debtor and creditor account to be furnished by official assignee to creditor assignees, or to any creditor who has proved, or any other person, such other person paying for the same any sum not exceeding half a crown.

No action for any dividend to be brought against the assignees by any creditor; but if the assignees refuse to pay such dividend, the court may, on petition, order payment, with interest for the time it has been withheld, and the costs of the application.

Assignees having unclaimed dividends to the amount of £50, who do not, within two calendar months from the expiration of a year from the order of payment of such dividends, either pay them to the creditors entitled thereto, or cause a certificate thereof to be filed in the Bankrupts' Office, with names, &c., of parties to whom due, shall be charged with legal interest from the time certificate ought to have been filed, and such further sum, not exceeding £20 per cent. per annum, as the commissioners think fit. The lord chancellor may order the investment of such dividends in the funds, and after three years they may be divided among the other creditors.

No creditor, having security for his debt, or having made any attachment in London, or any other place, of the goods and chattels of the bankrupt, shall receive upon any such security or attachment more than a rateable part of such debt; except in respect of any execution or extent served and levied by seizure upon or any lien upon any part of the property of such

bankrupt *before* the bankruptcy; provided that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall avail himself of such execution to the *prejudice of other fair creditors*, but shall be paid rateably with such creditors.

#### XV. CERTIFICATE OF CONFORMITY AND ALLOWANCE.

Every bankrupt who has surrendered, and in all things conformed to the bankrupt laws, is discharged from all debts due by him when he became bankrupt, and from all claims and demands made provable, in case he obtain a certificate of such conformity, and subject to such provisions and classification as already explained (p. 382); but no certificate shall discharge any person who was partner with the bankrupt at the time of his bankruptcy, or who was jointly bound, or had made any joint contract with the bankrupt. The only exception to the rule that all debts provable are barred by the certificate, is that of a debt due to the crown, *Atk.* 262, *Bunb.* 202.

On the application of the bankrupt, the court may appoint a public sitting for the allowance of the certificate to the bankrupt (whereof twenty-one days' notice shall be given in the *London Gazette* and to the solicitor of the assignees); and at such sitting any of the creditors or assignees of the bankrupt who have given three days' previous notice in writing to the registrar, may be heard against the allowance of such certificate; but it shall not be requisite for such certificate to be signed by any of the creditors of such bankrupt; and the court, having regard to the conformity of the bankrupt to the laws relating to bankrupts, and to the conduct of the bankrupt as a trader before as well as after his bankruptcy, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require; but no certificate to be such discharge unless the court shall, in writing under hand and seal, certify that the bankrupt has made a full discovery of his estate and effects, and in all things conformed, and that there does not appear any reason to doubt the truth or fulness of such discovery, and unless the bankrupt make oath in writing that the certificate was obtained fairly and without fraud.

Any contract or security given by the bankrupt to induce a creditor to forbear opposition, is void; and any creditor obtaining money, goods, or security for money, as an inducement to forbear opposition, shall forfeit the same and his debt.

A bankrupt having obtained his certificate, is to be free from any claim or debt provable under his bankruptcy, and his cer-

tificate is to be received as evidence of his bankruptcy, and if taken in execution for any such debt or claim, any judge of the court wherein judgment has been obtained may order his discharge on production of his certificate; nor is he to be liable for any promise or contract to pay made after the fiat, unless it be made *in writing*.

*Allowance.*—Every bankrupt who has obtained his certificate is to be allowed, out of the produce of his estate, £5 per cent. (but not to exceed £400), if 10s. in the pound are paid; £7 10s. per cent. (but not to exceed £500); if 12s. 6d.; and £10 per cent. (but not to exceed £600), if 15s. The allowance, however, not to be payable until after the expiration of twelve months from the expiration of the bankruptcy, and then only if the requisite amount of dividends has been paid. If at the expiration of that time the amount of the dividends paid is under 10s., the court may allow the bankrupt what they see fit, not exceeding £3 per cent. nor more than £300; and they may direct one partner to receive the allowance, though the others be not so entitled, 12 & 13 V. c. 101, s. 195.

In joint commissions, under which any partner has obtained his certificate, if a sufficient dividend has been paid, upon the joint and separate estate of such partner, he may receive his allowance, though the others are not entitled. But no bankrupt is entitled to his allowance unless a sufficient dividend be paid both on the joint and separate estate, 2 G. & J. 281; nor until certificate has been confirmed by the vice-chancellor.

Where a person who has been bankrupt *before*, or compounded with his creditors, or taken the benefit of the insolvent act, obtains his certificate, unless his estate produce, after all charges, sufficient to pay every creditor under the commission 15s. in the pound, such certificate only protects his *person* from arrest and imprisonment; but his *future* estate and effects (except his tools of trade and necessary household furniture, and the wearing apparel of himself and family) vest in the assignees, who may seize the same for the benefit of the creditors.

If an assignee, indebted to the estate, become bankrupt, his certificate will only exempt his person from arrest and imprisonment; but his *future* effects will be liable for the *full* amount of his debt, together with interest, due to the estate for which he was assignee.

No bankrupt to be entitled to an allowance, or to his certificate, or if allowed it becomes void, if such bankrupt have lost, by any sort of *gaming* or *wagering*, in one day £20, or within one year next preceding his bankruptcy, £200; or if he shall, within one year next preceding his bankruptcy, have lost £200 by any contract for the purchase or sale of any government or other stock, where such contract was not to be performed one week after the contract, or where the stock bought or sold was



not actually transferred or delivered in pursuance of such contract; or shall, after an act of bankruptcy committed, or *in contemplation of bankruptcy, have destroyed, altered, mutilated, or falsified, or caused to be so done, any of his books, papers, writings, or securities*; or made, or been privy to the making of, any false or fraudulent entries in any book of account, or other document, with intent to defraud his creditors; or shall have concealed any property; or if any person having proved a false debt under the commission, such bankrupt being privy thereto, or afterwards knowing the same, shall not have disclosed the same to the assignees within one month after such knowledge.

Any time within one month after the certificate has been allowed, it may, on the application of a creditor or assignee to the vice-chancellor, be recalled and cancelled; 12 & 13 V. c. 101, ss. 201-3.

Where a bankrupt lost £40 on a wager, though he on the same day won more than that sum, the certificate has been stopped on petition, 2 G. & J. 329.

Assignees, upon request, are to declare to the bankrupt how they have disposed of his property, and account to him for the surplus, if any; but no surplus to be paid till the creditors have received INTEREST on their respective debts from the date of the commission.

JUDGMENT CREDITORS.—The law prior to the present Consolidation Act was, that if a creditor proved his debt, he could not take the debtor in execution, whether the certificate was suspended or refused. A debt once proved annulled the power to arrest the bankrupt, and only those creditors who had abstained from proving could take advantage of the refusal or suspension of a certificate. But by 12 & 13 V. c. 106, s. 257, the assignees of any bankrupt, when his accounts shall have become records of the court, are deemed judgment creditors for the amount on such accounts; and every creditor of a bankrupt, immediately after the proof of his debt has been admitted, is deemed a judgment creditor to the extent of his proof; and the court, when it has refused the bankrupt further protection, or has refused or suspended his certificate, shall, on application of such assignees or creditor, grant a certificate under seal in prescribed form; and every such certificate will have the effect of a judgment of one of the superior courts, empowering the parties to issue out and enforce a writ of execution against the *body* of the bankrupt. By s. 258, assignees for the time being may issue execution on such certificate, to the same extent as the assignees to whom such certificate was originally granted. Next, s. 259 enacts, that after refusal of protection, or refusal or suspension of certificate, the bankrupt shall not be discharged from such execution until he has been in prison for the full period of ONE

YEAR, *except by order of the court*. Execution, however, can only issue against the *person*, not the effects of the bankrupt; but the creditor, if he relent taking out execution, has no power to shorten the one year's imprisonment,—that can only be done by leave of the court. Neither does there appear any power, except by the court, to prevent successive periods of imprisonment by different creditors.

#### XVI. COMPOSITION WITH BANKRUPT.

At any meeting of creditors, after the bankrupt has passed his last examination, twenty-one days' previous notice being given in the *Gazette*, if the bankrupt or his friends make a *tender of composition*, which nine-tenths in number and value of the creditors assembled accept, another meeting may be held, of which twenty-one days' previous notice must be given: and if, at such second meeting, nine-tenths in number and value of the creditors then present also agree to accept such offer, then the court may annul the bankruptcy, and every creditor will be bound to accept the composition agreed to.

In deciding on such offer, creditors under £20 are not entitled to vote, but their debts are computed in *value*; any person residing out of England may vote, by letter of attorney, properly attested; and the bankrupt shall, if required, make oath that no undue means have been employed to obtain the assent of any creditor to such arrangement. The creditor who accepts any gratuity or higher composition for assenting to the composition, to forfeit the same, and also his debt.

#### XVII. ARRANGEMENTS UNDER COURT OR BY DEED.

If a trader is unable to meet his engagements with his creditors, and is desirous of laying the state of his affairs before them, he may petition the court for protection, and such protection be extended as the court thinks fit. If in prison, the petitioner may be released on giving security for his appearance, unless imprisoned for debt contracted by fraud, breach of trust, or by reason of any conviction against him for infringement of the revenue laws, breach of promise of marriage, seduction, adultery, libel, slander, assault, malicious arrest, or malicious suing out a fiat of bankruptcy.

Petition to be supported by affidavit in prescribed form. After granting protection order, court will direct a *private sitting*, and official assignee be appointed; notice of such sitting being given to every creditor not less than fourteen days before; and petitioning debtor to file his account ten days before private sitting, and give a copy to the assignee. At first sitting creditors to prove their debts; and if *three-fifths* in number and value of those who have proved to the amount of £10 and

upwards, assent to the debtor's proposal, or any modification thereof, then another private sitting to be held for confirmation. Such second sitting not to be held earlier than fourteen days from the first, and previous notice to creditors to be given seven days before.

At such *second sitting* creditors may also prove their debts; and if three-fifths in number and value who have proved debts to the amount of £10 and upwards again accept the debtor's proposal, the acceptance to be binding on *all the creditors of the petitioner* who had notice of the sittings of the court; and the court, if it think the debtor's proposal honourable and proper to be executed, may approve and confirm the same.

When the proposal of debtor has been carried into effect, the court to grant a certificate of conformity.

If the petitioning debtor do not attend the sittings of the court, nor file his accounts, his petition to be dismissed. Or, if at the first sitting his proposal be not accepted by the requisite number of creditors, or, if debt have been contracted by fraud or other disqualification, or the petitioner has not made a true discovery, then the court may adjudge him bankrupt, and adjourn the proceedings into the *public court*.

A *deed of arrangement* entered into by any such trader, and signed by or on behalf of *six-sevenths* in number and value of the creditors whose debts amount to £10 and upwards, is binding on all the creditors. But such deed does not bind any creditor who has not signed, until after the expiration of three months from notice of suspension of payment or of proposed deed, unless the court shall otherwise order.

Trustee under the deed to certify as to proper number of creditors having signed, and his certificate to be filed, with account of debts annexed, and be verified by affidavit of arranging debtor.

**RULES AND ORDERS.**—The following rules and orders pertaining to these arrangements commenced Jan. 11, 1853:—

That two fair copies on paper of the petition shall be delivered to the registrar, together with the original petition, one for the use of the commissioner, the other for the use of the official assignee and for the inspection of creditors.

That the sum of £10, or such other sum, not exceeding £30, as the commissioner shall direct, shall, before the appointment of any sitting of the court under such petition, be deposited with such official assignee of the commissioner to whom the petition shall be allotted as he shall direct, for the costs of the sitting or sittings, for the payment of such remuneration to the official assignee as the commissioner shall award for the examination of the accounts, and for other necessary expenses, and the residue, if any, shall be repaid to the petitioner.

That in all cases where a petitioner shall be in custody, there

shall be filed with his petition a certificate from the gaoler, or officer of the cause or causes of the detention of the petitioner.

That no person not being or not claiming to be a creditor, or the solicitor or duly authorized attorney of a creditor, except the official assignee and one clerk, and the petitioner accompanied by two persons, shall be present at any sitting, or be permitted to inspect the petition or other proceedings, unless authorized in writing by the commissioner.

#### XVIII. OFFENCES AGAINST THE BANKRUPT LAWS.

In addition to the more serious offences already specified the Bankrupt Consolidation Act gives a distinct enumeration of such offences by the bankrupt as will suspend or annul the grant of his certificate. If at the sitting for his last examination, it appear that the bankrupt has been guilty of certain offences that will be specified, further protection from arrest will be denied him; and, if at any sitting for allowance of certificate, it appear that he has been guilty of such offences, the court will not only refuse him protection, but will annul or suspend the grant of certificate for any time it may think fit.

The disqualifying offences referred to are the following :—

First.—If the bankrupt shall, at any time after the issuing of the fiat or filing of the petition for adjudication of bankruptcy, or within two months next preceding the issuing of such fiat or the filing of such petition, with intent to conceal the state of his affairs, or to defeat the objects of the law of bankruptcy, have destroyed any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

Second.—If the bankrupt shall, with the like intent, have kept or caused to be kept false books, or have made false entries in, or withheld entries from, or wilfully altered or falsified, any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

Third.—If the bankrupt shall have contracted any of his debts by any manner of fraud, or by means of false pretences, or shall by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors.

Fourth.—If the bankrupt shall, at any time within two months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, fraudulently, in contemplation of bankruptcy, and not under pressure from any of his creditors, with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor, wholly or in part, or have made away with, mortgaged, or charged any part of his property, of what kind soever.

Fifth.—If the bankrupt shall, at any time after the issuing

of the fiat or the filing of the petition for adjudication of bankruptcy, and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the court or his assignees any debt due to or from him, or have concealed or made away with any part of his property, of what kind soever.

Sixth.—If the bankrupt shall, under his bankruptcy, or at any meeting of his creditors within three months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have attempted to account for any of his property by fictitious losses or expenses.

Seventh.—If the bankrupt shall, within six months next preceding the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any suit for the recovery of any debt or demand provable under his bankruptcy, or shall be indebted in costs incurred in any action or suit so vexatiously brought or defended.

Eighth.—If the bankrupt shall, at any time after the issuing of the fiat or the filing of the petition for adjudication of bankruptcy, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document relating to his trade, dealings, or estate.

Ninth.—If the bankrupt shall during his trading have wilfully, and with intent to conceal the true state of his affairs, have omitted to keep proper books of account; or shall wilfully, and with intent to conceal the true state of his affairs, have kept his books imperfectly, carelessly, and negligently.

An appeal to the vice-chancellor is allowed to the bankrupt on the grant of his certificate, and also as to the class in which it shall be placed.

#### XIX. FEES AND SALARIES.

By 12 & 13 V. c. 101, s. 48, every document enumerated below must be printed or written upon vellum, parchment, or paper bearing the subjoined stamp duty in lieu of all fees.

£ s. d.

Petition for Adjudication, or for arrangement between Debtor and Creditors, or for certificate of arrangement by deed . . . . .	10	0	0
Declaration of Insolvency . . . . .	0	2	6
Summons of Trader Debtor . . . . .	0	2	6
Admission or Deposition of Trader Debtor . . . . .	0	2	6
Bond with Sureties . . . . .	0	5	0
Application for search for Petition or other Proceeding (except search relative to sitting or meeting) . . . . .	0	1	0
Allocatur by any officer for costs not exceeding £5 . . . . .	0	1	6

All office copies of fiats, petitions, affidavits, orders, or other proceedings, to be paid for at the rate of three-halfpence per folio of ninety words.

## CHAPTER XVII.

### *Insolvency.*

By the term insolvent is generally meant a person that is not in a condition to pay his debts, in the ordinary course, as persons carrying on trade usually do, *Bayley v. Schofield*, 1 M. & S. 350.

Between bankruptcy and insolvency the distinction is twofold. First as to *persons*, the bankrupt being a trader, which an insolvent need not be. Secondly, as to *property*; for the bankrupt, after receiving his certificate, is discharged, not only as to his person but as to his future acquired property, by which clearance he becomes eligible to resume trade and obtain credit afresh. The condition of the insolvent is essentially different, whose person only is protected, not his after acquisitions. At the moment of his discharge he contracts a future liability to pay his debts, by a solemn instrument which he signs, and which the creditors have the power of enforcing ever after. The insolvent, though personally relieved by due process of law, when no fraud is proved against him, is still liable, to the latest period of his life, to pay his debts *in full*; the creditors reserving authority to compel the payment of their debts, when the insolvent is in a condition to liquidate them, by bringing him up from time to time before the court, which will decide whether he be then able to pay his debts out of the property he has acquired.

In the year 1820, a Court for Relief of Insolvent Debtors was established in Portugal Street, for the purpose of receiving the surrender of property and effects, for the benefit of creditors of persons in a state of insolvency. It consists of a chief and two other commissioners, being barristers of ten years' standing, appointed by the crown, with a chief clerk, provisional assignee, receivers, and other officers, appointed by the court. It is a court of record, and has the same power as the superior courts in Westminster, in compelling the attendance of witnesses, the production of papers, in punishing for contempt, and protecting persons attending the court from arrest; but it cannot award costs, except in particular cases, and witnesses are not obliged to attend unless their reasonable expenses are previously tendered to them.

The jurisdiction of the Metropolitan Insolvent Court extends over insolvents and debtors to the distance of about twenty miles from London. In the country the County Courts have

now exclusive jurisdiction over insolvency within their respective local limits.

The several laws relative to insolvent debtors were amended and consolidated by the 7 G. 4, c. 57, which act is amended by 1 W. 4, c. 37, and 2 W. 4, c. 44; all of which acts, with some alterations that will be noticed, have been continued by 1 & 2 V. c. 110. The provisions of these acts admit of the subjoined arrangement :—

1. *Petition.*
2. *Schedule.*
3. *Assignees.*
4. *Opposing Creditor.*
5. *Discharge of the Insolvent.*
6. *Future Liability of the Insolvent.*
7. *Fees and Attorneys of the Court.*
8. *Circuit Commissioners.*

#### I. PETITION OF INSOLVENT.

Any person in *actual* custody for any debt, damages, costs, or money due for contempt of any court whatever, may, within fourteen days from his first detention, petition the Insolvent Court for his discharge; stating in such petition, the place of his confinement, the time when petitioner was taken into custody, the name of the parties, and the amount of debts for which he is detained, and praying to be discharged, not only against the demands of the person detaining him, but against all other creditors, having claim at the time of presenting the petition; which petition shall be signed by the prisoner and filed in court.

At the time of subscribing the petition, the insolvent executes an assignment to the *provisional* assignee of the court, renouncing all title to his property and effects, except wearing apparel, working tools, bedding, and such necessities of himself and family as shall not exceed the value of £20. During confinement the court may order an allowance for the support of the petitioner, or for the expense of making out or filing his schedule; and, in case he does not obtain his discharge under the act, the assignment is void.

Persons not actually in custody *within the walls of a prison*, and during the proceedings thereon, are not entitled to petition. But, after an order has been obtained for hearing the petition, the court may, in case of sickness properly attested, or in case of a prison being crowded, dispense with the *actual* custody of the person: in such case, however, if the prisoner goes out of the rules, his petition will be dismissed, 1 *Cress.* 27.

It is further enacted by 1 & 2 V. c. 110, s. 38, that the court may direct a person to be discharged on his finding *two sureties*

to enter into a recognizance to the provisional assignee for his appearing at the place and time fixed for his hearing, and to abide the judgment of the court: after such discharge the insolvent shall be free from arrest by any creditor named in the schedule until the time appointed for his hearing, and such further time as the court by endorsement on the order shall appoint. But if the insolvent neglect to appear, the recognizance will be forfeited, and the amount recoverable by distress and sale; and the court may issue a warrant to arrest him and deliver him into his former custody; and all detainers lodged at or since his discharge will be in force against him. Any insolvent so discharged, on appearing before the court, will be deemed for the purposes of the act in the custody in which he was when so discharged.

"By 2 & 3 V. c. 39, the court may appoint persons to receive the recognizance of sureties, residing at a greater distance than ten miles from Portugal Street, without the necessity of such sureties appearing before the court itself at its usual place of meeting.

The filing of a petition is an act of bankruptcy, and if a commission be issued within *two calendar months*, vacates the assignment; nevertheless, the court proceeds to hear and adjudicate as if no commission had issued; and if the insolvent obtain his certificate under the commission of bankruptcy, the property which may remain to him after such certificate, or to which he may subsequently become entitled, is liable to the assignees of the court, as if the assignment had continued in force.

When a petition is dismissed, or the assignment avoided by a commission of bankruptcy, the acts of the provisional or other assignees cannot be impeached.

The *voluntary preference* of a creditor, by conveyance of money, goods, bills, or other property, after the filing of the petition, or within three months prior to the imprisonment of the petitioner, being then in insolvent circumstances, is fraudulent and void.

The provisions of 3 G. 4, c. 39, mentioned at page 387, are extended to the assignees of the insolvent.

When the prisoner has executed any warrant of attorney, or given any *cognovit actionem*, whether for a valuable consideration or otherwise, such cannot be acted upon against the goods of the petitioner after his imprisonment.

The provisional assignee may dispose of all the property of the insolvent; and may sue, in his own name, for the recovery of any debts or rights due to the insolvent; the proceeds being applied to defray expenses, and to the purposes of the act.

By 1 & 2 V. c. 110, if a prisoner charged in execution, or imprisoned for contempt for non-payment of money or costs,



shall not make satisfaction within *twenty-one days*, the *detaining creditors* may apply by petition to the court for an order, vesting the real and personal estate of the insolvent in the provisional assignee: such petition to be signed by the parties applying, and the time and place of commitment, and the amount of debt to be stated therein, and be supported by evidence by affidavit or otherwise: upon which petition, the court may require the insolvent to file his schedule, and be brought up and dealt with under the act.

## II. SCHEDULE OF INSOLVENT.

Within fourteen days after the petition is filed, the insolvent prepares a schedule of all his debts, distinguishing such as may be admitted from those disputed by the prisoner, and, also, an account of all his property, and of all offices, fees, salaries, pensions, trusts, and whatever else, from which he derives any benefit or emolument: together with an account of all debts owing to him, and the names of the debtors, their places of abode, and of the witnesses who can prove such debts. Lastly, the schedule must describe the wearing apparel, bedding, tools, and other necessities, not exceeding £20, which the insolvent is allowed to retain, with the value of each excepted article.

After the petition and schedule are filed, the court appoints a day for hearing; which, in no case, must be more than four calendar months from the date of such appointment.

## III. ASSIGNEES.

At any time after the filing of the petition the court appoints assignees from among the creditors, to whom, on their acceptance of the appointment, an assignment is made, by the *provisional assignee*, of the property and effects of the prisoner, for the benefit of his creditors. The assignees are empowered to get in all property and effects of the prisoner; and in case of any real estate, the same, within the space of six months, shall be sold by public auction, in such manner and place as the major part in value of the creditors shall approve.

By 1 & 2 V. c. 110, s. 45, the court, after making a *vesting order* on petition of creditors, may appoint assignees of the estate and effects of the prisoner; and when they have signified to the court their acceptance of the appointment, the estate, vested in provisional assignee, shall be vested in them in trust for the creditors, without conveyance or assignment: such appointment to be entered of record, and notice thereof published; and every person so appointed assignee to be deemed an officer of the court, and subject to its control. Court empowered to grant a remuneration to the assignees, not exceeding five per cent. on the produce of the estate.

Creditors are to meet thirty days before the sale of a real estate, and signify their approval thereof in writing; and of this meeting fourteen days' notice must be given in the *Gazette* and also in some newspaper in the vicinity of the insolvent's residence. Copyhold or customary estate may be conveyed to purchasers by the assignees. Goods in possession and disposal of the insolvent, whereof he is reputed owner, are to be deemed his property; but this does not affect the assignment of any ship or vessel duly registered according to 3 & 4 W. 4, c. 55.

Within *three months*, at the furthest, and so from time to time, as occasion shall require, the assignees shall make up an account, upon oath, before an officer of the court, or justice of the peace, of the prisoner's property and effects; and in case of a balance in hand, a dividend must be forthwith made, of which dividend thirty days' previous notice shall be given; and every creditor, whose debts shall be stated, *admitted* in the prisoner's schedule, shall be allowed to share in the dividend, unless the prisoner, assignees, or any creditor, shall object to such debt, in which case the court shall decide.

An assignee having neglected to make *quarterly* returns of the state of the property of an insolvent, the court refused to allow him to act as assignee, a *second* time.

When any part of the property is so circumstanced that the *immediate* sale of it might be prejudicial to the interests of the prisoner, the court may make a special order, directing the management of such property till it can be properly sold; and if the debt can be paid by way of mortgage instead of sale, the court may give directions for that purpose.

The assignees may execute powers, which the insolvent might have executed for his own benefit, such as granting leases, taking fines, transferring public stock, or annuities; but they cannot nominate to a *vacant* ecclesiastical benefice.

On complaint, by the prisoner, or any of his creditors, the court may inquire into the conduct of the assignees; and, in case of malversation, award costs against them. Court may commit assignees for disobedience to any order duly made for enforcement of the act, or made with assignees' consent for that purpose. But this power does not extend to a commissioner acting out of court on summons.

No suit in equity can be commenced by the assignees, without the consent of a majority of the creditors in value.

The assignees, with the consent of one commissioner, and the major part of the creditors in value, may compound for any debt due to the prisoner; or may submit differences connected with the estate of the insolvent to arbitration.

In case any assignee shall die or be unwilling to act, the court may appoint a fresh assignee.

Assignees who wilfully employ or retain any part of the pro-

ceeds, may be charged with interest at a rate not exceeding £20 per cent. per annum.

Dividends unclaimed for twelve months are to be paid into court, to the credit of the estate of the insolvent; in default of payment, the goods of the assignees may be distrained; or, if no distress, the party may be imprisoned.

Assignees removed, or their executors refusing to deliver up the property, writings, or papers of the insolvent, may be imprisoned until they comply with the order of the court.

The assignees, in case the insolvent is a *beneficed clergyman*, or curate, are not entitled to the income of such benefice or curacy; but they may obtain a sequestration of the profits for the benefit of creditors.

Neither are the assignees entitled to the pay, half-pay, pension, or other emolument, of any person who is, or has been, in the *army, navy, or civil service* of the Government, or of the East India Company; but the court may order, subject to the approval of the heads of public offices, a *portion* of such pay, half-pay, pension, or emoluments, to be appropriated to the liquidation of the debts of the insolvent.

*Distress for rent*, after the arrest or imprisonment of the petitioner, is not available for more than a *year's rent* accrued prior to the assignment to the assignees; but the landlord may be creditor to the estate for the remainder.

#### IV. OPPOSING CREDITOR.

On the day appointed for hearing the petition, any creditor, having first made oath of his debt, may oppose the discharge of the prisoner, and, for that purpose, put such questions, and examine such witnesses, as the court shall admit, touching the matters contained in the petition and schedule; or a creditor may require, or the court direct, that an officer of the court shall investigate the accounts and schedule of the prisoner, and report thereon to the court. If the court deem the opposition to the discharge of the prisoner frivolous and vexatious, it may award such costs as may appear just and reasonable; but if it be shown, to the satisfaction of the court, that the prisoner has been guilty of some *fraudulent* concealment, the opposing creditor is entitled to the costs of opposition.

Notice of the time for hearing the petition is to be given to creditors whose debts amount to five pounds, and to be advertised in the *Gazette*.

By 1 W. 4, c. 37, if it appear on the hearing that the proof of notice to the creditors is imperfect, or some other matter has been omitted to be done, the commissioners may proceed to adjudicate, and make the discharge of the prisoner *conditional* on the performance of the forms omitted, without subjecting

him to the hardship of having the hearing of his petition absolutely adjourned to a future occasion.

Where creditors reside out of Middlesex, Surrey, London, or Southwark, affidavits may be tendered in opposition to the prisoner's discharge.

#### V. DISCHARGE OF INSOLVENT.

. In case the prisoner is not opposed, and the court is satisfied with his schedule, it may order his immediate discharge from custody, or it may direct the prisoner to be detained in custody, for any period not exceeding six months, to be computed from the time of filing the petition. But if the prisoner has *destroyed his books*, or falsified or made false entries, or *withheld entries* from them, or otherwise acted in a *fraudulent manner* towards his creditors, or wilfully omitted anything in his schedule, he may be imprisoned for any term not exceeding **THREE YEARS**: or, when the prisoner has contracted debts fraudulently by *means of a breach of trust*, or put creditors to any unnecessary expense, or incurred debts by means of any false pretence, or without having any probable expectation, at the time when contracted, of paying them; or be indebted for damages for criminal conversation with the wife, or for seducing the daughter or servant of the plaintiff; or for *breach of promise of marriage*; or for damages in any action for malicious prosecution, *libel, slander*, or trespass, the court may extend the imprisonment to **TWO YEARS**.

When the prisoner is not discharged, the court may, on application for that purpose, order the creditor at whose suit he is detained to pay any sum not exceeding **4s. weekly**; and, in default thereof, he is to be discharged.

The discharge exonerates the prisoner from all claims and costs arising from contempt or otherwise, issuing out of any court, ecclesiastical or civil. It also frees him from sums payable by annuity, the annuitants being admitted as creditors to the estate of the insolvent at a fair valuation of their interest. But it does not extend to any debts due to the crown, nor for any offence against the revenue laws, nor at suit of any sheriff, or other public officer, upon any bail-bond, entered into for any person prosecuted for such offence, unless the Treasury certify its consent to the discharge.

The insolvent is discharged with respect to debts due from him, only to the extent of the sums stated by him in his schedule, *Barton v. Tattersall*, 2 R. & M. 541.

Insolvents under writ of *capias* or *extent* must apply to the Barons of the Exchequer to be discharged.

The court has power to order prisoners detained in confinement to be kept within the walls.

## VI. FUTURE LIABILITY OF INSOLVENT.

Before adjudication on the petition, the court shall require of the insolvent to execute a warrant of attorney, empowering the court to enter up judgment against him in one of the superior courts of Westminster, in the name of the assignees, or provisional assignee, for the *amount of the debts unpaid*; and when the insolvent is of sufficient ability to pay such debts, or is dead, leaving assets for that purpose, the court may permit execution to be taken out upon the judgment against the property of the prisoner acquired after his discharge; and such proceeding may be renewed till the *whole of the debts, with costs*, due by the prisoner, shall be paid and satisfied. Warrant of attorney so given to the court deemed within the meaning of the act mentioned p. 274.

No person after judgment entered up is liable to *imprisonment for any debt*, to which the adjudication of the court extended. Nor can execution, except upon the judgment under the act, issue against him for debt contracted prior to his confinement; but he may be proceeded against for a debt which could not be enforced at the period of his discharge.

If a prisoner, after discharge, become entitled to any stock in the public funds, or to any property which *cannot be taken into execution* under the judgment, and refuse to give up the same, then he may, on the complaint of the assignees, be remanded into custody.

When an order for the discharge of a prisoner has been issued by mistake, the court may amend or revoke it, and, if necessary, recommit him to custody.

An insolvent after his discharge may, on the application of an assignee to the court, be again examined as to the estate and effects set forth in his schedule, and, if he refuse to appear, or to answer questions upon oath, he may be recommitted.

Persons wilfully omitting, with *intent to defraud creditors*, anything in the schedule so sworn to, or excepting in it bedding, apparel, working tools, and other necessities to a greater value than £20, or persons assisting therein, are guilty of a misdemeanor, and liable to be imprisoned and kept to hard labour, for any period not exceeding three years.

No uncertificated bankrupt, nor any person having had the benefit of this or any former insolvent act, can have it a *second* time within FIVE YEARS, unless three-fourths in number and value of the creditors assent to it, or unless it appear to the court that such person, since his bankruptcy, or his discharge, has done his utmost to pay all just demands, and that the debts which he has subsequently incurred have been unavoidable, from inability to acquire subsistence for himself and family.

Married women are entitled to the benefit of the act, and

may petition the court, on executing a special conveyance and assignment.

#### VII. FEES AND ATTORNEYS OF THE COURT.

The court may appoint attorneys to practise therein. But any attorney, removed from the files of the court, continuing actually to practise, is guilty of a contempt, and liable to fine and imprisonment.

Sales by auction, or any conveyance, affidavit, or other instrument, are exempt from duty.

The officer of the court is to produce schedules and proceedings of the court, if required by the insolvent or his creditors; and such documents are to be admitted, in all courts of law, as legal evidence.

The keepers of prisons, or their deputies, are entitled to the sum of 3s. from each prisoner, for carrying him before the court on the hearing of his petition and schedule.

Newspapers required to insert advertisements on payment of a reasonable compensation.

#### VIII. CIRCUIT COMMISSIONERS.

Three commissioners are severally to make circuits and attend at the towns and places appointed for insolvents in the country to appear; their powers as to the estate and effects of insolvents, and as to the schedule and petition are the same as those already specified when acting in the metropolis.

The expense of conveying the insolvent to the place appointed is not to exceed 1s. per mile, to be paid to the gaoler, or officer in whose custody he is conveyed. such charge to be defrayed out of the effects of the petitioner, if sufficient for the purpose; if not, by the treasurer of the county, city, or town in which the petitioner is confined.

The clerk of the peace or his deputy is to act as clerk to the commissioners; and receive from every petitioner, in whose case he acts, the sum of 5s. and no more; the same to be in lieu of all fees; and such fee to be paid previous to the bringing up the petitioner before such chief or other commissioner.

Notice of the time and place of attendance on the commissioner in each county, city, or town, to be given in the *London Gazette*, and in some public journal or newspaper, published in each county respectively, once in each of the two weeks immediately preceding the time appointed for such attendance.

Copies of the schedule and petition to be lodged with the clerk of the peace; and the clerk, or his deputy, shall, on the reasonable request of the petitioner, or of any creditor, produce such petition and schedule, and books, papers and writings, and permit them to inspect and examine the same, on the payment

of 1s. ; and such clerk of the peace, or his deputy, shall provide a copy of such petition or schedule, or such part thereof as shall be so required ; for which he shall be entitled to receive 4d. for every sheet containing seventy-two words, and no more, unless the same shall be the last or only sheet, in which case he shall be entitled to 4d., although it does not contain seventy-two words.

By 3 & 4 W. 4, c. 47, to obviate the inconvenience to prisoners during the vacations and circuits of the commissioners, one or more of the judges of the Court of Bankruptcy may be commissioned by the crown to preside in the Insolvent Debtors' Court. In case of the illness of any of the commissioners in term, the secretary of state, or on circuit, the commissioner himself may appoint a barrister to execute his duties during his disability, 1 & 2 V. c. 110, s. 33. Petition from prisoner, or his creditors under the Lords Act, 32 G. 2, c. 28, prohibited.

These Insolvent Acts do not extend to Scotland nor to Ireland.

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## PART V.

### CIVIL INJURIES.

WRONGS are of two kinds ; *private* wrongs and *public* wrongs : the former are an infringement of the rights of individuals, and termed civil injuries ; the latter are a violation, not only of the rights of individuals, but of the community, and distinguished by the harsher names of felonies or misdemeanors. Redress for private wrongs must be sought at the risk and cost of individuals, while the prosecution of criminal wrongs is carried on in the name and at the suit of the crown as conservator of the general peace and security. It is the nature and character of the former, or civil injuries, that will now engage our attention, reserving public crimes for the concluding part.

While the number of criminal offences recognised by the laws is great, those of a civil nature are comparatively few, and the principal of them may be comprised under the following classification :—

1. *Libel.*
2. *Slander.*
3. *Personal Injuries.*
4. *Adultery.*
5. *Seduction.*
6. *Trespass.*
7. *Malicious Prosecution.*
8. *Nuisance.*
9. *Negligence.*

## CHAPTER I

*Libel.*

**LIBEL** is usually defined a malicious defamation of another, expressed in writing or printing, or by signs, pictures, or representations, and differs from slander, which is verbal or spoken defamation. In general any publication is libellous that hurts or disparages either an individual or the State; with respect to individuals, whatever tends to hurt their feelings or reputation is a libel; and with respect to the *Government*, anything is construed libellous that tends to hold it up to hatred, contempt, or disesteem.

The remedy for libel is either by *indictment*, by *action*, or *information*: the former for the public offence, as tending to provoke the person libelled to a breach of the peace, which is the same whether the matter of the libel be *true* or *false*; and therefore the defendant, on an indictment for libel, will not be allowed to allege the truth of it by way of justification, unless he can show that it was for the public benefit the matters charged were published. In a *civil* action, however, a libel must appear to be false as well as scandalous; for, if the *charge* be *true*, the plaintiff has no ground to demand compensation for himself, whatever offence it may be against the public peace; and, therefore, in a civil action for damages, the truth may be pleaded in bar of the suit. A proceeding by *information* is generally directed against libels on the established religion or government, and is instituted *ex officio* by the Attorney-General. In a criminal information by an individual, the court will exert a discretionary power in sanctioning such a mode of prosecution; and when the libel contains a direct charge, which it lies in the power of the applicant to deny, if false, the court will require a positive affidavit that the charge is unfounded.

Between libel or *written* scandal, and mere *verbal* defamation, there is an important distinction, because the former is presumed to be a more deliberate injury, and propagated in a wider and more permanent form. Hence the word *swindler*, if *spoken* of another (unless it be spoken in relation to his trade or business), is not actionable; but if it be published in a *written* form, it is actionable, 2 *Hen. Bl.* 531. So, the publication of a letter in which the plaintiff was designated "one of the most infernal villains that ever disgraced human nature" was held actionable, without proof of special damage, 1 *Bos. & Pul.* 331.

Printing or writing may be libellous, though the scandal be not directly charged, but obliquely and ironically. So is hanging up, or burning in effigy, with intent to expose some person to ridicule and contempt, a libel.



Defamatory writing, expressing only one or two letters of a name, provided the accompanying matter clearly designate an individual, is as properly a libel as if the whole name had been expressed at length.

With respect to publications on the GOVERNMENT, the main question is, whether bad motives are imputed to the members of administration, and whether the observations are couched in terms *decent and respectful*. The imputation of mere error in judgment, even to the sovereign herself, if done in a respectful manner, is not libellous, 2 *Campb.* 402. Hence it follows, that though the tendencies of measures may be temperately discussed, they must never be imputed to *corrupt design*; that no member of the Government must be charged with corruption, or with a wish to infringe on the liberties of the people.

To publish a full, true, and entire account of proceedings in *courts of justice* upon a trial, is not in general libellous, 8 T. R. 298. But a party will not be justified in publishing *conclusions* unfavourable to another, which he draws himself from the evidence delivered in a court of justice, instead of stating the evidence itself. Nor can a correct account of the proceedings in a court of justice be published, if such account contain matter of a scandalous, blasphemous, or criminal tendency; and if it do, it is a ground for a criminal information. And the publication of the proceedings of a court of law, containing matter defamatory of a person who is neither party to the suit, nor present at the time of the inquiry, seems to amount to a libel. The publication of proceedings before a coroner's inquest, or a preliminary inquiry before a magistrate, however correct the statement, if it contain libellous matter of another, is actionable, 3 *Chitty's Bl.* 124. It appears, from the case of *Harris v. Wheldon*, that it is an indictable offence to publish at all *ex parte* proceedings before a magistrate. *Common Pleas, Dec. 21, 1826.*

A letter by a party (not residing in the district) to the bishop of the diocese, informing him of a report of misconduct of an incumbent of the district, bringing scandal on the church, if found by the jury to have been *bonâ fide* and not from malicious motive, has been held to be a privileged communication, *Jer. Dig.* 1846; 99. And, it seems, would have been so before the Church Discipline Act, 3 & 4 V. c. 86.

A court of general gaol delivery has the power to make an order to prohibit the publication of the proceedings, pending a trial likely to continue for several successive days, and to punish disobedience to such order by fine, *Rex v. Clement*.

Writings reflecting on the memory of the dead are punishable, provided it appear the author intended, by the publication, to hurt the feelings, or to bring dishonour and contempt on the relations of the deceased.

A fair and candid comment on a place of public entertainment, in a newspaper, is not a libel. Nor a comment upon a literary production, exposing its errors and absurdities, and holding up the author to ridicule; providing such comment do not exceed the limits of fair and candid criticism, by attacking the domestic habits of the writer, unconnected with his work. But if a person, under pretence of criticising a literary work, defame the private character of the author, and, instead of fairly discussing its merits, travel into collateral matter, introducing facts not stated in the work, accompanied with injurious comments upon them, such person is a libeller, and liable to an action.

A fair criticism on the works of a professional artist, in the course of his professional employment, however mistaken it may be, is not libellous; if it is unfair and intemperate, and written for the purpose of injuring the party criticised, it is actionable, *Soane v. Knight*, Moo. & Malk. 74.

A party who pursues an *unlawful* vocation has no remedy by action for any libellous comments regarding his conduct in such vocation, *Pratt's Dig.* 634.

It is not competent for a man charged with libel to justify, by urging that one similar to that for which he is prosecuted was published, on a former occasion, by other persons, who were not prosecuted, 5 *T. R.* 436.

Though *malice* is an essential requisite in every criminal libel, yet the act of publication is deemed presumptive evidence of malice, which the defendant will be required to disprove; and printers and publishers have been repeatedly convicted when it was certain, from absence or otherwise, they were ignorant of the contents of the paper they were assisting to circulate by means of their servants or agents.

The party who writes a libel dictated by another, and has discretion to understand its nature—he who originally procures it to be composed—he who actually composes it—he who prints, or procures it to be printed—he who publishes, or causes it to be published, all, in short, who assist in framing or in diffusing it, are implicated in the guilt of the offence.

As to the privileges of the HOUSE OF COMMONS, in respect of libels, there have been two decisions. In *Beaumont v. Thwaites*, Lord Tenterden held that the publishing of matter reflecting upon the character of an individual cannot be justified by the fact that such matter was a correct and impartial copy of a parliamentary report, *K. B. Nov. 1, 1827.*

In the sessions of 1835 and 1836, the House of Commons passed resolutions that parliamentary papers and reports printed for the use of the house should be publicly sold by their printer, and a report from the Inspectors of Prisons was afterwards ordered by the house to be printed; upon which Chief Justice

Denman held that if the report contained a libel on an individual, the printer of the House of Commons, who sold it, was liable to an action, and that the resolutions of the house did not render this a privileged communication. *Stockdale v. Hansard*, 7 C. & P. 731. But resolutions of both houses were passed in 1845, contravening the opinion of the Queen's Bench; and persons who conceived themselves injured by false evidence given against them to committees of either house, having brought actions to vindicate their characters from the slander, both houses, on being informed by petition of the party sued that such actions had been brought against them, sent for the plaintiff and his attorney, and by threats compelled them to stay their actions, and so far submit to the imputations brought against them. This was done in the exercise of the alleged privileges of parliament.

Upon this basis the question seems settled by 3 V. c. 9, which affords a summary protection to all persons employed in the publication of any reports, papers, votes, or proceedings that either house of parliament deems necessary to be published, by enabling the parties to adduce, before any court, the certificate of the Lord Chancellor, or Speaker of the House of Commons, attesting that such publication had been ordered.

## II. LORD CAMPBELL'S LIBEL ACT.

In the preamble to this act, the 6 & 7 V. c. 96, it is declared to be for the better protection of private character, and for more effectually securing the liberty of the press, and the prevention of abuses in its exercise. With these objects it is provided, that in any action for defamation it shall be lawful for the defendant to give in evidence, in mitigation of damages, that he offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity, in case the action shall have been commenced before there was an opportunity of offering an apology. In an action for a libel contained in any public newspaper or other periodical publication, it is competent to the defendant to plead that such libel was inserted without actual malice, and without *gross negligence*; and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted a full apology for the libel, or, if the newspaper or periodical publication in which the libel appeared be ordinarily published at intervals exceeding one week, had offered to publish the apology in any newspaper or periodical publication to be selected by the plaintiff; and the defendant is at liberty to pay into court a sum of money by way of amends for the injury sustained.

By ss. 3-5, if any person publish or threaten to publish any

libel upon any other person, or directly or indirectly threaten to print or publish, or directly or indirectly propose to abstain from printing or publishing, or directly or indirectly offer to prevent the printing or publishing, of any matter touching any other person, with intent to *extort any money or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust*, every such offender, on being convicted, is liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding *three years*. Any person maliciously publishing any defamatory libel, *knowing the same to be false*, and being convicted, is liable to be imprisoned for any term not exceeding two years, and to pay such fine as the court may award. Any person maliciously publishing any defamatory libel, and being convicted, is liable to fine or imprisonment, or both; such imprisonment not to exceed the term of one year. On the trial of any indictment or information for a defamatory libel, the truth of the matters charged may be inquired into, but not amount to a defence unless it was for the *public benefit* that the matters charged should be published; and to entitle the defendant to give evidence of the truth of such matters it is necessary for him to allege the truth of the matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege the particular fact or reason establishing the public benefit resulting from the publication; to which plea the prosecutor is at liberty to reply generally, denying the whole; and if after such plea the defendant is convicted, it is competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by his plea, and by the evidence given to prove or to disprove the same; but the truth of the matters charged in the alleged libel in no case to be inquired into without such plea or justification. When, upon the trial of any indictment or information for a libel, under the plea of Not Guilty, evidence shall have been given that shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, the defendant shall be allowed to prove that such publication was made without his authority, consent, or knowledge, and that the publication did not arise from want of due care or caution on his part. In the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs incurred: and, upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs incurred.

Lord Campbell's act does not extend to Scotland; but it was extended to Ireland, by 8 & 9 V. c. 95. For some alterations by the Procedure Act, *see* p. 44.

### III. PUBLICATION OF LIBEL.

The communication of a libel to any one person is a publication in the eye of the law; and, therefore, the sending an abusive private letter to a man is as much a libel as if it were openly printed, for it equally tends to a breach of the peace. If A. send a manuscript to the printer of a periodical publication, and do not restrain the printing or publishing of it, and he prints and publishes in that publication, A. is liable as the publisher, 5 *Dow.* 501. But if a libel be stolen, this is no publication. The delivery of a newspaper to the officer at the stamp-office is a publication, 4 *B. & C.* 35. It has been questioned whether the writing and composing a libel with an *intent* to publish, but not followed by publication, be an indictable offence; at all events, it appears that the finding the paper in the handwriting of the defendant is such *prima facie* evidence of publication by him as to admit the writing to be read to the jury, from which the jury may infer the publication according to the circumstances before them, *Rex v. Burdett*, 4 *B. & A.* 95.

The sale of a libel in a shop is evidence of publication in a prosecution against the master, and is sufficient for conviction, unless contradicted by contrary evidence, showing that he was not privy, nor in any degree assenting to it.

By the 32 G. 3, c. 60, the functions of juries on trials for libel are more precisely ascertained and discriminated. Prior to this act, it had been frequently determined that the only questions for the consideration of the jury were the *fact* of the publication and the truth of the inuendos, that is, the *meaning* of the passages of the libel, as stated in the record; and the court alone was competent to determine whether the matter of the publication was or was not libellous. But the 32 G. 3 provides, that, on every trial of an indictment or information for libel, the jury may give a *general verdict* of guilty or not guilty, and shall not be required or directed by the judge to find the defendant guilty merely on proof of publication, and of the sense ascribed to the libel in the record.

The punishment for either making, repeating, printing, or publishing a criminal libel is fine, or fine and imprisonment, proportioned to the nature of the offence and the rank of the offender.

When a person is brought up to receive judgment, his conduct subsequent to his conviction may be taken into consideration, either by way of aggravation or mitigation of the punishment.

## CHAPTER II.

*Slander.*

SLANDER, or evil-speaking, consists in maliciously and falsely speaking of another, charging him with the commission of an offence punishable by law, as treason, murder, larceny; or which may exclude him from society, as with having an infectious disease, or which may hurt his trade or livelihood, as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave.

Words imputing an indictable offence are actionable or not, according to the sense in which they may be understood by bystanders not acquainted with the facts to which they may relate, and which may render them privileged, and the secret intent of the speaker is immaterial, *Hankinson v. Bilby*, 16 Mees & W. 442.

Words of heat, anger, or passion, spoken without deliberation, as to call a man a rogue, a scoundrel, a villain, a fool, a liar, if productive of no evil consequence, are not actionable; neither are words spoken by the defendant, or counsel, in judicial course, if pertinent to the matter in question. The imputation of a mere defect or disregard of moral or religious duties is insufficient to sustain a prosecution, 4 *Taunt.* 355. To call a man a heretic, or adulterer, is cognizable only in a spiritual court, unless temporal damage ensue.

To constitute *legal* slander, some precise crime must be imputed, or real injury sustained. Hence, it is actionable to say a man is a highwayman; but it is not so to say he is *worse* than a highwayman. To render words actionable, they must be uttered without *legal* occasion. On some occasions, it is justifiable or excusable to utter slander of another, provided it be without malice. So, false and scandalous matter contained in articles of the peace, exhibited to justices; or the declaration of a court-martial, that the charge of the prosecutor was malicious and groundless, is not actionable. The accusation of a mere *intent*, *propensity*, or *inclination* to commit a crime is not actionable, because it only imputes an inchoate delinquency, and not the actual commission of a crime, for which the party accused could be punished. But an accusation of seducing another to commit a crime, as subornation of perjury, or of soliciting a servant to steal, is actionable. A verbal charge of incontinence against a modest woman is not slander cognizable in the temporal courts, except the city court; and even there the cause of action must arise within the jurisdiction of the city of London. But words not actionable in themselves may become so by reason of some

special damage arising from them; as if you say to a woman, *You are a whore*, whereby she loses her marriage, or a substantial benefit arising from the hospitality of friends, 1 *Taunt.* 39. So, if a person slander the title of another, whereby he is prevented selling his estate; but in such cases, it is necessary not only to prove the *uttering* of the words, but the *injury* sustained. Words which impute the want of integrity or capacity, whether mental or pecuniary, in the conduct of a *profession, trade, or occupation*, in which the party is engaged, are actionable. Thus, an action will lie for accusing a clergyman of incontinence, &c., for which he may be deprived; or a barrister, attorney, or artist, of inability, inattention, or want of integrity; or a person *in trade*, of fraudulent or dishonourable conduct, or of being in insolvent circumstances, 5 *B. & Cr.* 180. To say to one who carries on the business of a corn vendor, "You are a rogue and a swindling rascal; you delivered me one hundred bushels of oats, worse by 6*d.* a bushel than I bargained for," is actionable, and entitles to a verdict without proof of special damage. But an action is not sustainable for saying a tradesman has charged an exorbitant price for his goods, unless fraud be imputed. In all these cases the words are actionable without proof of special damage, because they have a direct tendency to injure the party accused in his business or profession.

It is actionable to republish any slander invented by another, unless the republication be accompanied by a disclosure of the author's name, and precise statement of the author's words, so as to enable the party injured to maintain against the original author. Words spoken in derogation of a peer, a judge, or other great officer of the crown, which are called *scandalum magnatum*, are held to be still more heinous; and, though they be such as would not be actionable in the case of a common person, yet, in this, they amount to a serious offence. Words, also, tending to scandalize a magistrate, or person in public trust, are deemed more criminal than in the case of a private man.

## CHAPTER III.

### *Personal Injuries.*

THE following injuries are such as chiefly affect the *personal* security of individuals.

1. **THREATS** and menaces of bodily hurt, through fear of which a man's business is interrupted: this is incipient, though not actual violence, for which compensation may be had by action.

2. **ASSAULT**, which is an attempt or offer to do a corporal injury to another; as by holding up the fist in a menacing

manner, striking with a cane or stick, though the party miss his aim; throwing a bottle or glass, with intent to wound or strike. But, to constitute an assault, there must be an *intention* to use actual violence, coupled with the *ability*; the party aimed at must be within reach of the fist, or the weapon lifted or levelled against him.

3. BATTERY, which also includes assault, is the unlawful beating of another: the least touching of another person in a rude and angry manner is *battery*; every man's person being held inviolate, and no one having a right to meddle with it in the slightest degree. But battery is justifiable where the party has authority; as a parent or master may give moderate correction to his child, scholar, or apprentice.

4. MAYHEM, or, as it is more correctly written, *maihem*, is an injury more atrocious than the preceding, and consists in violently depriving another of the use of such members as may be useful to him, either to defend himself or to annoy his adversary. Among such defensive members are reckoned not only arms and legs, but a finger, an eye, and a fore-tooth. But the loss of one of the jaw-teeth, the ear, or the nose, is no mayhem at common law, as they can be of no use in personal defence. The distinction between legal maiming and corporal maiming, as punished by 1 V. c. 85, is now obsolete, or nearly so.

For the three personal injuries of assault, battery, and mayhem, an indictment may be brought as well as an action; the one at the suit of the crown for the crime against the public, the other at the suit of the party injured, to obtain reparation in damages. But, in general, the adoption of both proceedings is considered vexatious, and will induce the jury to give smaller damages in the action. The Legislature, too, has discouraged actions for trifling injuries of this nature, by enacting that in all actions of trespass for assault and battery, in case the jury shall find a verdict for damages under 40s., the plaintiff shall have no more costs than damages, unless the judge, at the trial, certify that an assault and battery were sufficiently proved.

5. FALSE IMPRISONMENT may be included under the head of personal injuries, and consists in the unlawful detention of the person without legal authority. Every species of confinement is an imprisonment, whether it be in a common prison, in a private house, in the stocks, or even by forcibly detaining one in the public streets.

The legal restraint of personal liberty must arise either by process from the courts of justice, or by warrant from a legal officer, having power to commit under his hand and seal, and expressing the cause of committal; or from some special power warranted either by the common law or act of parliament;



such as the power of a private person, without warrant, to arrest felons or apprehend vagrants.

False imprisonment, however, may arise from executing a legal process at an improper time; as by arresting in a civil suit on Sunday. The circumstance of an imprisonment being committed under a mistake constitutes no excuse, 3 *Wils.* 309.

## CHAPTER IV.

### *Adultery.*

DURING the Commonwealth adultery was made a capital crime, and several unsuccessful attempts have been subsequently made to bring it within the pale of criminal jurisdiction. Adultery, therefore, continues to be considered merely a civil injury, and the only remedy which the law affords is an action whereby the husband may recover against the adulterer a compensation in damages for the loss of the *society* and *assistance* of his wife, in consequence of the adultery.

The damages in cases of *crim. con.* depend on the rank and quality of the plaintiff; the condition of the defendant—his being a friend, relation, or dependent of the plaintiff; the nature of the seduction, as founded on the previous behaviour of the wife, and her character; and the husband's obligation, by settlement, or otherwise, to provide for the children, which he cannot but suspect to be spurious.

To enable the husband to maintain his action, there must be no imputation of his having courted his own dishonour, or of his having been instrumental to his own disgrace. So, if the wife be suffered to live as a prostitute with the privity of the husband, and the defendant has thereby been drawn in to commit the act of which the husband complains, the action cannot be maintained.

If the husband live separate from his wife, in consequence of mutual agreement, in which he gives up all claim to be derived from her *society*, he is not entitled to maintain an action for her seduction.

Lord Kenyon held, that where a husband kept a mistress, he was not entitled to maintain an action for adultery; but in a subsequent case, of *Bromley v. Wallace*, 4 *Esp.* 237, Lord Alvanley was of opinion, that, unless the husband live so much with other women as amounts to total abandonment of his wife, it is only a circumstance which affects the damages.

The EVIDENCE of the fact of adultery, which, from its nature, is usually circumstantial, must be sufficient to satisfy the jury

that an adulterous intercourse has actually taken place. Proof of familiarities, however indecent, is insufficient, if there be reason to apprehend, from the fact of the parties being interrupted, or any other circumstance, that a criminal connection has not been consummated. The confession of the wife will be no evidence against the defendant, *Bull. N. P.* 28; but a discourse between the wife and the defendant is evidence; as also are letters written by the defendant to the wife.

The defendant may show, in mitigation of damages, that the wife had before eloped, or had been connected with others: that she had borne a bastard before marriage: that she had been a prostitute previous to her connection with the defendant; but he cannot give evidence of the general reputation of her being or having been a prostitute, for that may have been occasioned by her familiarity with him. For the same purpose he may also give in evidence that she was a woman of loose conduct, and notoriously bad character: that she made the first overtures and advances to the defendant: that his means and expectations are inconsiderable.

It may be further urged, that the husband carried on a criminal correspondence with other women in an open and undisguised manner, or that he treated his wife harshly or unkindly; or that they did not live happily together.

## CHAPTER V.

### *Seduction.*

IN the session of 1849, an effort was for the first time made by the 12 & 13 V. c. 76, to protect females from certain fraudulent practices, well known to be resorted to by infamous persons to procure their defilement. Under this act, if any person shall, by false pretences, false representations, or other fraudulent means, procure any woman or child under the age of twenty-one years, to have illicit carnal connexion with any man, such person is guilty of a misdemeanor, and liable to be imprisoned, with hard labour, for a term not exceeding two years.

But the statute seems to apply only to third parties employed in the odious office of procuration, and still leaves unpunishable, either as a civil or criminal wrong, the direct seduction of females. Accordingly, it appears to be only indirectly, by the consequences of illicit intercourse, not for the perpetration of the act itself, that the male transgressor is made accountable for his misconduct. Unless a woman has had a promise of marriage, she can obtain no reparation for the injury she has sustained

from her seducer; and even when imposed upon by the most solemn promises of marriage, unless they have been *overheard* or made *in writing*, she cannot recover any compensation, being incapable of giving evidence in her own cause. It is only by a fiction of law, the supposed and less endearing relation of master and servant, and consequent *loss of service* the parent has sustained, in consequence of the pregnancy of his daughter, that he can maintain an action against the seducer, for the wrong done to his family. The action may be also brought by a relative, a master, or any one under whose protection a female resides; the loss of service being the legal principle on which it rests; and, therefore, it has been extended to the case of one suing for the seduction of his adopted child, or even to a father suing for the seduction of his *married daughter*, serving in his family, apart from her husband, *Harper v. Luffkin*, 1 M. & R. 166.

It is immaterial what is the *age of the daughter*; but it is necessary that at the time of the seduction she should be living in, or be considered as part of, her father's family. It has been held, that a young woman who was upon a visit at a relation's house, and there seduced, might be considered, in support of this action, as in the service of her father, or as part of his family. But it has been decided that this cannot be maintained by the father, if at the time of the seduction she is living in another family, and has no intention of returning to her father's house, though she is under the age of twenty-one.

The damages, as in actions for adultery, are proportioned to the previous character of the female, and the rank and situation of the plaintiff and defendant: and as the female, in a prosecution by a parent or guardian, is not supposed to receive any part of the damages, she is a competent witness on the trial, and is usually brought forward to prove the fact of seduction. The state and situation of the family should be proved in aggravation of damages, and, if such be the fact, that the defendant professed to visit the family, and was received as the suitor of the daughter. The defendant may, in mitigation of damages, adduce any evidence of the improper, negligent, or imprudent conduct of the plaintiff himself; as, where he knew that defendant was a married man, and allowed his visits in the probability of a divorce, Lord Kenyon held the action could not be maintained, *Peak*, R. 240.

Besides the ordinary suit for damages, another action for seduction is a common action for *trespass*, which may be brought when the seducer has illegally entered the father's house, in which action the debauching his daughter may be stated and proved as an aggravation of the trespass. Or, where the seducer carries off the daughter from her father's house, an action might be brought for enticing away his servant. In these two

actions the seduction may be proved, though it may not have been followed by the consequences of pregnancy.

These are the only remedies which have been extended by the modern ingenuity of the courts, to enable an unhappy parent to recover a recompense, under certain circumstances, for the injury he has sustained by the seduction of his daughter. But though the law affords such slender protection for the chastity of females, when consenting to their own degradation, yet it has been cautious in protecting their persons from the assaults of violence, and also in guarding their property from any who may seek to obtain possession of it by forcible marriage, which last, as will appear under the head of ABDUCTION, is a highly penal offence.

## CHAPTER VI.

### *Trespas.*

TRESPASS is, generally, any act whereby another is injured in person or property ; but, in a more limited and common acceptance, it signifies an entry upon another man's ground without his permission, especially if contrary to his order, and doing some damage, however inconsiderable, for which a compensation is recoverable, according as the intent of the trespasser was wilful or inadvertent, and the damage actually sustained.

Every man's ground, in the eye of the law, is inclosed either by a visible fence or imaginary boundary line, and whoever enters upon it without leave of the owner, is a trespasser.

But a person is answerable not only for his own trespass, but that of his cattle ; for if, by negligent keeping, they stray upon the land of another and tread down the herbage, or commit other injury, this is a trespass for which the owner must answer in damages.

In some cases trespass is *justifiable*, as if one come to demand or pay money, there payable or due ; or to execute, in a legal manner, the process of law. Also, a man may justify entering into an inn, or public-house, without leave of the owner, because when a man professes to keep such accommodation, he gives a general licence to any person to enter his doors. So, a landlord may justify entering to distrain for rent ; a commoner to attend his cattle commoning on another's land ; and a reversioner to see if any waste be committed on the estate.

But in cases where a man misbehaves himself, or abuses the authority with which the law invests him, he becomes a trespasser : as if a person come into a tavern, and will not go out in a reasonable time, but stays there all night, contrary to the

inclination of the owner, he makes himself a trespasser from his first entry.

An exclusive interest in the crop or herbage, without a property in the soil, is sufficient to maintain an action of trespass. But possession, actual or constructive, must be proved, *Pratt's Dig.* 945. If trees are excepted in the lease, the land whereon they grow is necessarily excepted also; consequently, the landlord may maintain trespass *for breaking his close*, if the tenant cut down the trees.

## II. TRESPASSES IN SPORTING.

The common law allows the hunting of foxes, badgers, and such noxious animals, over the ground of another man for the public good, and excuses a trespass done in the pursuit of them; provided in doing this no more damage is done than is necessary and inevitable, and that it is done in the usual and ordinary course. But the law will not justify any excessive damage to the land; for, even in hunting the fox or badger, a man must not break the ground or dig for him.

In general, it is a trespass at common law for any man to hunt over another's ground, for which the owner or tenant may maintain his action. No lord of a manor can justify sporting over another's ground in an unlawful manner, unless he have grant of free-warren over such man's ground. And it seems doubtful, after the decision of Lord Ellenborough, in the *Earl of Essex v. Capel*, Hertford Assizes, A.D. 1809, whether the hunting of a fox over the grounds of another, without leave of the owner, is not a trespass; at all events, to unbag a fox, and pursue him over another's ground, would be a trespass.

In an action of trespass for sporting over the ground of another, the jury may take into consideration, in determining the verdict, not only the actual damage sustained by the plaintiff, but circumstances of aggravation and insult on the part of the defendant. Thus, in *Merest v. Harvey*, where the defendant, a magistrate, had committed the trespass before the plaintiff's face, in defiance of notice that he was a trespasser, and had accompanied it by every kind of insult, a verdict was given for £500 damages; and the Court of Common Pleas, in a motion for a new trial, refused to reduce them, though the plaintiff had sustained no actual pecuniary injury, 5 *Taunt.* 442.

To prevent trifling and vexatious actions of trespass, it is provided by statute, that, where the jury who try an action of trespass, give *less damages than 40s.*, the plaintiff shall be allowed no more costs than damages.

But to this rule two exceptions have been made by subsequent statutes. The 8 & 9 W. 3, c. 2, enacts, that in *all* actions of trespass, when it appears that the trespass was *wilful* and *malicious*, and it is so certified by the judge on the back of the record, the

plaintiff shall recover *full costs*. And by the 4 & 5 W. & M. c. 23, full costs may be had against any *inferior tradesman*, apprentice, or other *dissolute* person, who is convicted of trespass in hawking, hunting, fishing, or fowling, upon another's ground, though the damages be *under 40s.* and without any certificate of the court.

What is meant by "*inferior tradesman*" is not clear; a clothier, cutler, ale-house-keeper, or shopkeeper, undoubtedly is such; but the Common Pleas were divided in opinion whether a person who was a surgeon and apothecary came under that designation, 2 *Wils.* 70. It has been decided, however, that a gentleman's huntsman is not a *dissolute* person under this act.

Every trespass is deemed *wilful* where the defendant has notice, and is forewarned not to come upon the land; as every trespass is *malicious* where the intent of the defendant plainly appears to be to harass and distress the plaintiff; and, in such cases, the judge is bound by statute to certify accordingly; which entitles the plaintiff to FULL COSTS, whatever may be the amount of damage, or the rank and qualification of the defendant.

A more summary proceeding than by action against trespassers is provided by the Game Act, 1 & 2 W. 4, c. 32, which enacts, that any person trespassing in the *day-time* in pursuit of game, or woodcocks, snipes, quails, landrails, or coney, shall, on conviction before a justice of the peace, forfeit any sum not exceeding two pounds, with the costs of conviction; and if any persons, to the number of *five* or more together, commit a trespass in like manner, each shall forfeit five pounds, with costs of conviction. Such trespassers not quitting the ground when required, or refusing to give their address, may be arrested and taken before a magistrate, and, on conviction, be fined not exceeding five pounds.

## CHAPTER VII.

### *Malicious Prosecution.*

A PERSON may be severely injured in his person, property, or reputation, by preferring malicious indictments or prosecutions against him, and for which there is no ground but the malice or knavery of the plaintiff: the remedy for this species of injury is by an action on the case.

The grounds of an action for a malicious prosecution are, the falsehood of the charge, the malice of the defendant, either express or implied, want of probable cause, and the injury sustained by the plaintiff, by reason of the malicious prosecution, either

in his person by imprisonment, his reputation by the scandal, or in his property by the expense.

Although it is not actionable to commence a civil suit, without just cause, since it is a mere claim of right; and the defendant, in case of a nonsuit or verdict against the plaintiff, is entitled to costs; yet the law allows an action to be maintained for maliciously arresting or holding a party to bail, either where there is not any debt due, or where the party is held to bail for a *larger* sum than is justly due.

A plaintiff is bound to accept from a defendant in custody the debt and costs, when tendered in satisfaction of his debt, and to sign an authority to the sheriff to discharge the defendant out of custody; and an action on the case will lie against a plaintiff for having maliciously refused so to do. And the refusal to sign the discharge is sufficient evidence of malice, in the absence of circumstances to rebut the presumption.

An action will lie for maliciously suing out a fiat of bankruptcy which is annulled, and this notwithstanding the specific remedy provided under the bankrupt laws.

Where there is *reasonable* ground for prosecution, and no malice appear, an action is not maintainable. So, a captain in the navy was accused by his superior of neglect of duty, and having been tried by a court-martial, was honourably acquitted; in this case, it was held an action for malicious prosecution could not be maintained, *Sutton v. Johnston*, 1 T. R. 493. But an action lies for an inferior against his superior military officer (both being under martial law), who imprisons him for disobedience to an order made under *colour*, but not within the scope of military authority, although the imprisonment be followed by a trial by court martial, 4 *Tunt.* 57.

Where two or more persons combine to prefer an indictment, charging any one without foundation, or otherwise conspiring to injure an individual, an *action of conspiracy* may be brought for compensation in damages.

As prosecutions for *criminal* offences are for the benefit of the public, and no one would be induced to pursue an offender for a criminal charge if he were liable to an action on an acquittal, the courts in general discharge actions for malicious prosecution, unless the malice of the prosecutor, as well as the innocence of the party accused, be obvious; and, in case of *felonies*, they will not afford the defendant a copy of the indictment, without which a civil action cannot be supported, unless, in the opinion of the court, the prosecution appear to have been malicious. But in action for a malicious prosecution for a *misdemeanor*, the party need not produce a copy of the indictment.

## CHAPTER VIII.

### *Nuisance.*

A PRIVATE nuisance, as distinguished from a common or public nuisance, which will fall under the class of criminal offences, may be defined an injury or annoyance to the person or property of an individual.

If a man build a house so near to mine that his roof overhang my roof, and throw the water off his roof upon mine, this is a private nuisance, for which an action will lie. Likewise to erect a house or other building so near mine that it obstructs my light and windows, is a nuisance. But in this case it is necessary the windows be *ancient*, that is, have subsisted there a long time without interruption, otherwise there is no remedy. An uninterrupted enjoyment for twenty years is sufficient to support an action on the case for this disturbance of it. But a right thus acquired must be limited in degree by the *use made of it*; a person by the use of a *portion* of a stream for twenty years does not thereby acquire a right to the use of the *whole*, or any quantity larger than that proportion; or by the enjoyment of light and air through a small window, to the same enjoyment through one of a larger size.

If an ancient window has been completely blocked up above twenty years, it loses its privilege, 3 *Camp.* 514; and even the presumption of right, from twenty years' uninterrupted enjoyment is excluded by the custom of London, which entitles every citizen to build upon an ancient foundation as high as he pleases.

If I have, by prescription or otherwise, a right of *way* annexed to my estate across another's land, and he obstruct me in the use of it, either by totally stopping it, or putting logs across it, or ploughing over it, it is a nuisance; for, in the first case, I cannot enjoy my right at all, and in the latter, I cannot enjoy it so commodiously as I ought to do.

To keep hogs near one's house, or to exercise any offensive trade, as a tanner, tallow-melter, soap-boiler or the like, are all nuisances, for which an individual has remedy by action.

So, also, it is a nuisance if life be made uncomfortable by the apprehension of *danger*, as by keeping great quantities of gunpowder near dwelling-houses, 2 *Str.* 1167. And, in the *Duke of Northumberland v. Clowes*, where defendant employed a steam-engine in his business as a printer, which produced a continual noise and vibration in the plaintiff's apartments, which adjoined the premises of the defendant, it was held a nuisance. In *Watson v. Clement* a verdict on similar principles was given.



It is a nuisance to erect a smelting-house for lead so near the land of another that the vapour or smoke kills or injures his corn or grass. It is a nuisance to stop or divert water that runs to another's meadow or mill; to corrupt or poison a water-course; erecting a dye-house or lime-pit in the upper part of the stream; or, in short, to do any act that tends to the prejudice of a neighbour.

But depriving one of a mere matter of *pleasure*, as of a fine prospect, by building a wall or the like,—this, as it abridges nothing really necessary or convenient, is not an injury for which there is remedy at law.

If I am entitled to hold a *fair* or *market*, and another person sets up a fair or market so near mine that he does me a prejudice, it is a nuisance to the freehold which I have in my market or fair.

But, in order to make this out a nuisance, it is necessary, 1. That my market or fair be the elder, otherwise the nuisance lies at my own door. 2. That the new market be erected within the third part of twenty miles from mine. For Sir Matthew Hale construes the *reasonable day's journey*, mentioned by Bracton, to be twenty miles. So that if the new market be not within seven miles of the old one, it is no nuisance; for it is held reasonable that every man should have a market within one-third of a day's journey from his home; that, the day being divided into three parts, he may spend one part in going, another in returning, and a third in transacting his necessary business there.

If a ferry be erected on a river so near another *ancient* ferry as to draw away its custom, it is a nuisance to the old one; for where there is a ferry by *prescription*, the owner is bound to keep it always in repair and readiness, with expert men and reasonable toll, for neglect of which he is liable to punishment by indictment: it would, therefore, be hard if another ferry were to share the profits which does not share the liabilities.

But where there is no *prescriptive* right there can be no exclusive privilege. So, it is no nuisance to erect a mill so near mine as to draw away the custom, unless the miller also intercept the water. Neither is it a nuisance to set up any trade or school in a neighbourhood in rivalry with another; for, by such competition, the public is benefited; or if the new mill or school occasion a damage to the old one, it is a loss without legal compensation.

## CHAPTER IX.

*Negligence.*

INDIVIDUALS are not only required to refrain from what the law prohibits, but are also required, under peculiar circumstances, to do acts, the omission of which may cause loss or detriment to others. Negligence or folly may be productive of injury, for which the party injured may bring an action on the case. Every man ought to take care that he does not injure his neighbour; and, therefore, when a man receives any hurt either in his person or property, through the default of another, whether by doing some act, or by neglect of any duty, though the same was not wilful, yet if it be occasioned by negligence, the law gives him this action to recover damages for the injury sustained: as where the defendant, by uncocking his gun, accidentally wounded the plaintiff, who was standing by to see him do it; or where a man retains an attorney to conduct a cause, and he, by some omission, loses it, and thereby injures his client; or, when a person bound to clean a ditch, suffers it to become so foul, that his neighbour's land is overflowed and injured. In such cases it is no defence for the defendant to allege that the injury was involuntary on his part, or that, by proper attention, the person who received the injury might have avoided it; but if the injury was occasioned by the plaintiff's own neglect, the action is not maintainable.

## PART VI.

## CRIMES AND PUNISHMENTS.

WE have now arrived at the last and more important division of the Laws of England, embracing the consideration of those delinquencies which, from their aggravated character, or more dangerous influence on the well-being of the community, are made the subject of criminal punishment. For the repression of private injuries, the law has mostly provided only retribution or compensation in damages; but such atonement would be an inadequate and disproportionate check on offences which endanger the person and life, as well as the dwellings and property of individuals; except, however, in their greater enormity, and

the different mode of procedure, there is no substantive distinction between public and private wrongs. Every private offence, when openly committed, is in some degree a crime against the public, by its evil example, and tendency to disturb that peace, order, and security, upon the due maintenance of which social happiness depends; consequently, the classification of offences into private injuries and public crimes, refers only to gradations of turpitude, the first of which is adequately restrained by individual prosecution, the latter requiring the strong arm of the magistrate, and the terror of a more public and ignominious infliction.

For upwards of thirty years public attention has been forcibly directed to the improvement of penal administration. Among the earlier legislative reformers may be reckoned Sir Samuel Romilly, Michael Angelo Taylor, and Sir James Macintosh, from whose exertions resulted a mitigation in capital punishments, the abolition of the pillory, the whipping of females, and the rescinding, in part, the barbarous exhibitions and posthumous consequences of high treason. In 1825 Sir Robert Peel introduced the Jury Act, which consolidated and amended sixty-five statutes. This beneficial act was followed by others for improving the discipline of prisons, and secondary punishments; for consolidating and amending the criminal law by lessening the number of capital offences, and simplifying judicial procedure, and for giving greater efficacy and precision to the punishment of delinquents. Next was Lord Lansdowne's act for consolidating and better defining the law relative to offences against the person, including homicide, bigamy, rape, abduction, assaults, &c. The laws applying to offences against the coin and the Mint were reformed in 1832, under the auspices of Lord Auckland and Mr. Herries. In the same year and in the following, bills were introduced and carried by Mr. Ewart and Mr. Lennard, for abolishing capital punishment for cattle and sheep stealing, and stealing in a dwelling-house. Subsequently to these, several statutes have been introduced under the auspices of Lord Campbell, effecting salutary reforms in civil and criminal justice; namely, the act already mentioned for improving the law of libel, and the act for the abolition of deodands, and for providing compensation to sufferers in cases of homicide.

Lord Brougham, although last noticed, ranks among the early reformers both of the civil and criminal law; and it is to his persevering expositions that the appointment of the commissioners on criminal law may be attributed, and to whose elaborate inquiries may be ascribed the legal amendments in Criminal Law about to be noticed.

In the first parliamentary session of the present reign a series of eight criminal statutes, forming 1 V. c. 84, to 1 V. c. 91, was

introduced by Lord John Russell, effecting sundry important changes, the general design of which appears to have been to bring the criminal administration of the country into more perfect harmony with the state of morals, public sentiment, and popular intelligence. The main scope of these acts is more correctly to define offences against the persons and dwellings of individuals; to regulate, and, as respects the length of duration, mitigate the infliction of transportation, solitary confinement, and imprisonment; and, further, to lessen the number of capital punishments in certain specified cases, as for forgery of every description; for remaining riotously assembled one hour after reading the riot act; for rescuing prisoners committed for, or convicted of, murder; for seducing soldiers and sailors from their allegiance; for administering unlawful oaths; for escaping a second time from the Penitentiary at Millbank; for carrying away persons into slavery from the coast of Africa, and for assembling armed to protect the landing of smuggled goods, or the rescuing of such goods, or maliciously shooting at the revenue officers: for all these offences the capital punishment is mitigated to transportation for life, or not less than fifteen years, or imprisonment not exceeding three years. A nicer graduation is also prescribed in the adjudication of secondary punishments, according to the degrees of violence or terror by which the crime is aggravated. The absolute infliction of a fixed and unmitigable punishment to a whole class of crimes has been found, in practice, neither so successful as had been anticipated, nor in accordance with criminal equity and the moral sense of the community: a wider interval has been left between the maxima and minima of judgments, so as better to enable the courts to apportion punishment according to accompanying circumstances and the different shades of depravity in offenders.

By the 4 & 5 V. c. 56, the punishment of death for rape was abolished, and transportation for life substituted. By the same act capital punishments have been abolished for the following offences: namely, embezzlement by a servant of the Bank of England or South Sea Company; for fraudulently using old deed stamps and other stamps, or of forging the stamp upon gold and silver plate in order to avoid paying the legal duties; for returning from transportation, and for riotously demolishing churches, chapels, and other enumerated buildings: in place of death punishment for these offences, transportation for life, or a term of years, or imprisonment for not less than three years, is substituted; and the offenders must be tried at the assize-court, not at the quarter sessions.

By these changes the crimes punishable with death have been reduced to these:—1, Treason; 2, murder; 3, attempt to murder, accompanied with actual injury to the person; 4, the burn-

ing of buildings or ships, with danger to human life, and under defined circumstances; 5, piracy, accompanied with acts endangering life; 6, burglary, aggravated by cruelty or violence to an inmate; 7, robbery, aggravated by personal violence; 8, holding out false lights with the intention of causing the shipwreck of any vessels in distress; 9, sodomy.

In the session of 1851 several acts of importance were passed, some of which were specially directed to the restraint of offences of a novel and atrocious character that had recently become frequent; others had for their object either the abatement of forms that facilitated the escape of offenders, or impeded their just and efficient trial. Of the statutes of the first description is that which regulates the sale of arsenic; another act makes further provisions for punishing persons using chloroform, the better to enable them to commit felonies, and also provides more stringent securities against malicious attempts on the lives and persons of travellers by railway. One act is for the protection of apprentices and servants, that originated in the case of the brutal treatment of a female pauper; and a further act is for regulating the expenses of prosecutions, the principal feature of which is, that the scale of expenses is hereafter to be settled by the Secretary of State, instead of the justices at the quarter sessions.

But the most urgent and perhaps valuable measure of criminal reform was that introduced by Lord Chief Justice Campbell, of which the main scope is to abate the strictness of legal usages and phraseology. By this statute, power is given to the court before which the accused is tried, to amend variances not material to the merits of the issue or fair trial of the accused, and abolishes the technical descriptions necessary in indictments for murder, forgery, perjury, and false pretences. It also enacts that three larcenies from the same person, within six months, may be included in the same indictment; that a formal objection to an indictment shall be taken before the jury is sworn, and that a prisoner shall not, according to past routine, be called upon to plead "guilty" or "not guilty," but shall be asked whether he wishes to plead guilty, or any other plea, or to be tried.

These changes, with the reduction of capital punishments and other alterations, affect almost the entire criminal code, and will be noticed more particularly under its respective heads in the following exposition of Crimes and Misdemeanors, or in the subjoined Explanations.

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## *Explanations.*

### I. CRIMES, TREASONS, FELONIES, MISDEMEANORS.

*Crime* is a violation or disregard of a public law, comprehending every species of delinquency cognizable by the judges and magistracy, under the legal description of Treason, Felonies, and Misdemeanors.

*Treason* includes not only offences directed against the person and authority of the sovereign, but also those crimes whose aim is, by alarming confederacies, the intimidation of established power, the forcible redress of public grievances, or the alteration of the laws and institutions of the State. It formerly consisted of two degrees, High Treason and Petty Treason. The latter offence was designated by Lord Coke as "murder and more;" it was, however, merely murder, aggravated by the relation subsisting between the murderer and the victim, such as that of servant and master, or wife and husband, which was supposed to give the crime the quality of a breach of menial or nuptial allegiance. This distinction causing much embarrassment in judicial procedure, and not being founded on any substantive difference, has been abolished, and petty treason assimilated in all respects to murder.

The punishment of treason is death, with certain discretionary additions; forfeiture of real and personal estate; corruption of blood; or the lesser infliction of transportation for life, or not less than seven years; or imprisonment for not less than two years.

*Felony* includes the higher class of offences, as murder, rape, burglary, arson; and may be either capital or not. Capital felonies are punishable with death; felonies not capital by transportation for life, or not less than fifteen years, or imprisonment; to which imprisonment, subject to the discretion of the court, hard labour, solitary confinement, or public or private whipping, may be added, unless the offender be a female. On a second conviction for a minor felony, the offender may be transported for life, or not less than seven years, or imprisoned, with or without whipping, for four years.

Private persons may arrest felons by a warrant from a justice of peace, or even by their own authority, and are bound to assist a peace officer in taking them into custody.

*Misdemeanor* is generally used in contradistinction to felony, and comprehends all offences which do not amount to felony; as perjury, battery, libel, conspiracy, attempts and solicitations to commit felonies, and various injuries to property from a spirit of wantonness or revenge. Every infringement of a statute

which either prohibits a matter of public grievance, or commands an observance of public convenience, though no penalty be mentioned in the statute, is a misdemeanor.

The punishment of misdemeanor is transportation for life or shorter period, fine or imprisonment, or both; to which last, hard labour, solitary confinement, or whipping, may, in many cases, be added.

The chief distinction now subsisting between *felony* and *misdemeanor* is, that the former occasions a total forfeiture of lands or goods, or both, at the common law; and to which capital or other punishment may be added, according to the degree of guilt. But it is proper to observe, that although forfeiture is an inseparable adjunct to felony, yet forfeiture of *land* only ensues where the punishment is capital; so that petty larceny, although a felony, does not occasion forfeiture of lands: every species of felony, however, is followed by forfeiture of goods and personal chattels.

It may be further remarked that the right of *peremptory* challenge by the accused of jurors on trial, that is, the right of challenging, at mere pleasure, without assigning any cause, which exists in cases of treason and felony, is a peculiarity that distinguishes these classes of crimes from misdemeanors; and that the right to challenge peremptorily to the number of thirty-five jurors in case of treason, and to the number of twenty only in cases of felony, is a distinguishing feature between treasons and felonies.

A difference between felony and misdemeanor till lately existed as to the right of restitution of stolen property; in felony the owner was entitled to the restitution of stolen goods, but not in misdemeanour. But the anomaly is removed by 7 & 8 G. 4, c. 29, and on a conviction for either felony or misdemeanor the court is empowered to direct the restitution of stolen goods. In the case of summary convictions, under fourteen years of age, of offenders for theft, by the 10 & 11 V. c. 67, the justices may order the restitution of stolen property.

The distinction between offences that are indictable, or subject to summary jurisdiction, forms a concluding noticeable division of crime. Besides treason, felonies, and misdemeanors, which are prosecuted by indictment and trial by jury, there is a numerous class of misdemeanors, which are subject to the summary adjudication of the magistracy, including, among others, petty thefts by juveniles, offences against the game laws, breaches of the peace, and disputes on wages.

By 8 & 9 V. c. 114, persons charged with, or indicted for, any felony or misdemeanor, and against whom no bill is found by the grand jury, or who on their trial have been acquitted or discharged by proclamation for want of prosecution, are no longer liable to the payment of any fee for their appearance under the

accusations against them. Certain fees heretofore payable out of the county rates to clerks of assize, or clerks of the peace, are also discontinued.

## II. TRANSPORTATION.

By 10 & 11 V. c. 67, persons under sentence or order of transportation may be removed to any prison or penitentiary in Great Britain.

The difficulty of finding colonies for the transport of offenders has rendered it necessary in certain cases to substitute other punishments; and the 16 & 17 V. c. 99, enacts, that no person shall be sentenced to transportation except for life, or for fourteen years, or upwards. In lieu of transportation, penal servitude is substituted in the following proportions:—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

By s. 5, conditional pardons may be allowed with reference to the substituted punishments, as in cases of pardons on condition of transportation. Former acts concerning convicts sentenced to transportation made applicable to the purposes of this act. By s. 9, the crown may grant licences, or tickets of leave, to convicts to be at large in the United Kingdom or Channel Islands, or in part of the same. Licences may be revoked and the convict apprehended. Persons convicted of larceny only, after a previous conviction of felony, not transportable, but punishable by penal servitude.

Provisions are made by 16 & 17 V. c. 121, for providing places of confinement for *female* offenders under sentence of transportation.

The 16 & 17 V. c. 118, amends the 6 & 7 V. c. 34, in respect to the endorsement of warrants for the apprehension of offenders.

By 16 & 17 V. c. 43, justices of counties are enabled to contract in certain cases for the maintenance and confinement of convicted prisoners in the gaols of adjoining counties.



## III. JUVENILE OFFENDERS.

For the more speedy trial of juvenile offenders, and to avoid the evils of their long imprisonment before trial, it is enacted by 10 & 11 V. c. 82, that persons not exceeding fourteen years of age, guilty of any theft that the law considers simple larceny, or aiding in its commission, may be summarily convicted by two justices, and sentenced to imprisonment for not exceeding three calendar months, with or without hard labour, or to forfeit any sum not exceeding £3; and, if a male, shall be once privately whipped, either instead of or in addition to such punishment; or the whipping may be inflicted by a constable out of prison. Justices may dismiss the accused, if they deem it expedient not to inflict any punishment, with or without sureties for future good behaviour, giving the accused a certificate of such dismissal as a bar to future proceedings. One police justice of the metropolis, or stipendiary magistrate elsewhere, has jurisdiction under this act. Justices may order restitution of stolen property.

The provisions of this act are extended by 13 & 14 V. c. 37, to juvenile offenders whose age does not exceed sixteen years; but offenders above fourteen not to be liable to the punishment of whipping. Justices acting under these acts are required to ask the accused if they wish the charge to be tried by a jury: if either accused or parents object to a summary conviction, justices to proceed with the case as before the passing of the acts.

## IV. REFORMATORY AND INDUSTRIAL SCHOOLS.

The 17 & 18 V. c. 86, is intended to render more extensive the use of the Reformatory Schools for the better training of juvenile offenders, which have been established in Britain, and are supported by voluntary contributions. Upon application to the Home Secretary from any such institution, an inspector of prisons will be directed to report on its rules and management, and if approved it will be certified by the Secretary to be a reformatory school, under the meaning of the act.

By s. 2, any person under sixteen years of age, convicted of offence by indictment or summary conviction, may, by the court or magistrates, be directed to be sent, at the expiration of his term of punishment, to a reformatory school, and to be there detained for not less than two, nor longer than five, years; but no offender to be so dealt with unless his punishment has been one of imprisonment for fourteen days at the least; and the Home Secretary may at any time direct an offender to be discharged from such school. Offenders absconding from the school, or refractory in conduct, are liable to be punished by

imprisonment, with or without hard labour, not exceeding three calendar months, s. 4.

By 18 & 19 V. c. 87, when any juvenile offender is detained in a reformatory school, the parent or step-parent, if of sufficient ability, is liable to contribute to his support and maintenance a sum not exceeding 5s. a week; and any two justices in England, or two magistrates in Scotland, may make such order for payment as they may deem reasonable, during the whole or any part of the detention of such offender in such reformatory school; in case of default of payment for fourteen days, the amount may be levied on the goods and chattels of the defaulter, or, if no sufficient levy can be found, he may be committed to the house of correction or common gaol for any term not exceeding ten days.

By 19 & 20 V. c. 109, the court or magistrate proceeding under 18 V. need not name, in passing sentence, the particular school certified under the act to which a youthful offender shall be sent, but the school may be designated by the chairman of the court or the magistrate before the expiration of the term of imprisonment. Young persons not to be sent to schools to which the parents, guardians, or surviving relative object. By s. 2, any person wilfully inducing a young person to abscond from a reformatory school is liable to a penalty of £5, or sixty days' imprisonment, failing payment.

#### V. FOR LESSENING THE DELAY OF JUSTICE IN SMALL THEFTS.

By 18 & 19 V. c. 126, power is given to justices at petty session, or to any metropolitan or stipendiary magistrate acting singly, to decide summarily in cases of theft, where the value of the thing stolen does not exceed 5s., or in cases of attempts at theft, if the parties accused consent, but not otherwise. If consenting, the charge is then to be entered in writing, and if the person accused pleads guilty, he is to be summarily condemned to the punishment provided by law; but if he plead not guilty, the case is to be gone into, witnesses are to be examined, and the accused may have the assistance of an attorney or a counsel. Where a person is charged with a theft, exceeding 5s. in value, he may plead guilty, and be sentenced forthwith, but he must be warned that he is not obliged to plead. The magistrates before whom the case is heard (s. 5) have power to remand persons for a further examination; forfeited recognizances are to be transmitted to the Clerk of the Peace, and convictions and other proceedings are to be returned to the quarter sessions. The justices under this act (s. 8) may order the restitution of property stolen or obtained by false pretences; and they may also order the payment of expenses. Every petty session for the purposes of this act must be an open court, and due notice

is to be given of the time and place of its holding. Convictions under this act to have the same effect as a conviction on indictment, except that it shall not be attended with any forfeiture. In cases of injury to property, the justices may award a sum of money to be forfeited, and paid as compensation to the parties aggrieved, although they may have been examined as witnesses, s. 22.

## VI. RESPONSIBILITY FOR CRIMES.

Certain persons, from age, natural infirmity, or want of freedom of will, are deemed incapable of committing crimes, and are exempt by the law from criminal responsibility.

An *infant* under the age of seven years cannot be guilty of felony; above the age of seven, if it appear that he has capacity to discern between good and evil, he is capable of guilt according to his discernment: but the presumption continues in favour of his innocence till he attain the age of fourteen, at which period he is, as to the commission of crimes, supposed to have attained discretion, and his actions are subject to the same responsibility as the rest of society.

If a *woman* commit theft, burglary, or robbery, by the coercion of her husband, or even in his company, which presumes coercion, she is not guilty of these crimes; but such exceptions do not extend to treason, murder, or manslaughter. And in all misdemeanors, the wife may be found guilty with the husband.

Persons committing crimes by casualty or misfortune, by ignorance or mistake of fact, *not of law*, by compulsion or necessity, are not punishable; but each of these circumstances, ignorance, necessity, or infirmity, must be strictly and satisfactorily made out by the party who relies on them for justification.

*Idiots* and *lunatics* are not chargeable for their own acts, if committed when under these incapacities, not even for treason itself. But he who is guilty of a crime through voluntary drunkenness, may be punished for it as much as if he were sober; and he who causes a madman to commit a crime is a principal offender, and as liable as if he had done it himself.

With respect to a *lunatic*, the 39 & 40 G. 3, c. 94, has provided for the different cases in which he may appear before a jury, both where it is in evidence that he was insane at the time of committing the act charged upon him, and where he shall appear so at the time of arraignment on trial. In the first case, the jury, instead of a general verdict of acquittal, are directed to find his insanity specially, and whether they acquit him on that ground. In the latter case, a jury shall be empannelled for the purpose of trying whether the prisoner be lunatic or otherwise at that time. If the verdict, in either case, esta-

blish the insanity, the prisoner must be kept in strict custody till the queen's pleasure be known for the future disposal of him.

The criminal responsibility of persons suffering from insanity or monomania will be further elucidated by the following queries, submitted to the judges by the house of lords, and to which the judges delivered their answers June 19, 1843. The first question for their consideration was as follows:—

“What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?”

With respect to this question, the opinion of the judges was, that, notwithstanding the party committed a wrong act when labouring under the idea of redressing a supposed grievance or injury, or under the impression of obtaining some public or private benefit, he was liable to punishment.

Second question—“What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons is charged with the commission of a crime—murder, for example,—and insanity is set up as a defence?”

The judges, in answer to this question, wished to state, that they were of opinion the jury ought in all cases to be told, that every man should be considered of sane mind, unless it was clearly proved in evidence to the contrary. That before a plea of insanity should be allowed, undoubted evidence ought to be adduced that the accused was of diseased mind, and that at the time he committed the act he was not conscious of right or wrong. This opinion related to every case in which a party was charged with an illegal act, and a plea of insanity was set up. Every person was supposed to know what the law was, and therefore nothing could justify a wrong act, except it was clearly proved the party did not know right from wrong. If that was not satisfactorily proved, the accused was liable to punishment, and it was the duty of the judges so to tell the jury when summing up the evidence, accompanied with such remarks and observations as the nature and peculiarities of each case might suggest and require.

With regard to the third question, viz.—“In what terms ought the question to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?”—the judges did not give an opinion.

The fourth question was—“If a person under an insane delu-

sion, as to existing facts, commit an offence in consequence thereof, is he thereby excused?"

The answer to this question was, that the judges were unanimous in opinion, that if the delusion was only partial, the party accused was equally liable with a person of sane mind. If the accused killed another in self-defence, he would be entitled to an acquittal; but if committed for any supposed injury, he would then be liable to the punishment awarded by the laws to his crime.

With regard to the last question—"Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law? or whether he was labouring under any, and what, delusion at the time?"—the judges were of opinion that the question could not be put to the witness in the precise form stated above, for by doing so they would be assuming that the facts had been proved. That was a question which ought to go to the jury exclusively. When the facts were proved and admitted, then the question, as one of science, could be generally put to a witness under the circumstances stated in the interrogatory.

#### VII. PRINCIPAL AND ACCESSORY.

All persons committing crimes are considered either *principals* or *accessories*.

A *principal* is either the actual perpetrator of the crime, or one who is present, or in the immediate vicinity, aiding and assisting the perpetrators.

An *accessory* is one guilty of an offence not principally, but by participation; as by advice, command, or concealment; and which may be either *before* or *after* the fact committed.

An accessory *before* the fact is one, who, being absent at the time of the crime committed, procures or counsels another to commit a crime; and it is an offence greater than the accessory *after*; and therefore, in many cases, as in murder, robbery, and wilful burning, benefit of clergy was taken away from accessories *before*, and allowed *after* the fact.

An accessory *after* the fact is where a person, knowing a felony to have been committed, receives or assists the felon. And, generally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes the assister an accessory; as furnishing him with a horse to make his escape, or conveying instruments to break gaol, or to bribe the gaoler to let him escape, makes an accessory to the

felony. But this does not extend to a woman who receives or assists her husband, though a husband receiving his wife will be an accessory; and, in general, the nearest relations assisting each other after a felony is completed, makes them accessories.

In high treason and murder there are no accessories, but all are principals: so, also, in simple larceny, and all other crimes under the degree of felony.

By 11 & 12 V. c. 46, an accessory before the fact to any felony may be indicted, tried, convicted, and punished in all respects as if he were a principal felon. Accessories after the fact to felony may be tried either together with the principal felon, or after the conviction of such felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or not have been convicted, or shall or not be amenable to justice.

#### VIII. REMEDIES AGAINST THE HUNDRED.

The liability of the hundred for any loss or damage sustained within its boundaries, appears to have originated in the old common-law process of pursuing, with horn and with voice, all robbers and felons. Upon every robbery committed, the statute of Winchester, 13 E. 1, directs that suit shall be made from town to town, and from county to county, and that hue and cry shall be raised upon the felons, till they be delivered to the sheriff. And, that such hue and cry may more effectually be made, the hundred is bound to answer for all robberies therein committed, unless they take the felon. But this statute, as well as others on the same subject, are repealed, and the old remedies against the hundred chiefly restricted to the recovering damages committed by riotous assemblies.

Under the 7 & 8 G. 4, c. 31, s. 2, in case of damage or demolition by riotous assemblies, the inhabitants of the hundred are liable to yield full compensation to the persons damnified, not only for the damage done, but also for any damage which may at the same time accrue to any fixture, furniture, or goods, in any church, chapel, house, or other building or erection. But, to recover against the hundred, the action must be commenced within three calendar months, and the parties injured must go before a justice within *seven* days after the commission of the offence, and there state, upon oath, the names of the offenders, if known, and enter into recognizances to prosecute them when apprehended.

Such action cannot be instituted against the hundred where the damage sustained is to a *less* amount than £30; but in this case the party may be indemnified by a petty session, application having, in the first instance, been made in writing within seven days after the commission of the offence, to the high constable of the hundred, and a notice of such application posted by the

claimant on the church or chapel door of the parish where the injury has been sustained.

#### IX. CRIMINAL EXPENSES, REWARDS, AND COMPENSATIONS.

Formerly, the judges had only power to allow the expenses of prosecutors in cases of *felony*; while those who prosecuted for misdemeanors, in which they often sustained equal hardship, and conferred equal benefit on the community, had to bear their own charges. This inconsistency was removed by the 7 G. 4, c. 64. This act is amended by 14 & 15 V. c. 55, and expenses in cases of misdemeanor examined before a magistrate allowed. Payment of costs and expenses, and compensation for loss of time, may be allowed by the court in the cases of the following misdemeanors; namely, unlawfully and carnally knowing any girl above the age of ten years and under the age of twelve years; unlawfully taking or causing to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her; conspiring to charge any person with any felony, or to indict any person of any felony; conspiring to commit any felony. Payment of costs and compensation for trouble are to be made to the complainant and witnesses in cases of common assault in which the magistrates shall consider the matter a fit subject for indictment, and shall bind over the complainant and prosecutor to give evidence at the sessions. By s. 4 the power of the quarter sessions to make regulations as to the payment of costs and expenses of prosecutors and witnesses, and also to persons apprehending offenders, is taken away, and by ss. 5 and 6, the same is given to the Secretary of State; the examining magistrates are to grant certificates in conformity to the regulations so made, but the certificate is not to be absolutely conclusive, as the compensation may be reduced. This act, however, is not to interfere with payments in respect of extraordinary courage, diligence, or exertion displayed in the apprehension of offenders; and the powers given to judges by the 7 G. 4, to order payments in respect of the apprehension of murderers and other criminals therein mentioned is extended to courts of sessions of the peace.

By a legal anomaly, no action was maintainable against a person who, by wrongful act or negligence, caused death, though the offender was liable if the sufferer was only hurt: but this defect is supplied by Lord Campbell's act, the 9 & 10 V. c. 93, which provides, "that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and re-

cover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony." The action to be for the benefit of the wife; husband, parent, or child of the person whose death has been so caused, and may be brought by and in the name of the executor or administrator of the deceased. Only one action will lie, and must be commenced within twelve months after the death. Plaintiff must deliver full particulars of the person for whom he claims, and the grounds thereof, to defendant or his attorney. The act extends to the United Kingdom, except Scotland.

#### X. INTERNATIONAL CONVENTIONS ON OFFENDERS.

Conventions were concluded between France and the United States and England in the year 1843, for the mutual apprehension and surrender of persons guilty of specified offences, and these conventions have been legalized and effect given to them by 6 & 7 V. c. 75, and c. 76. In case of a French offender seeking refuge in this country, on requisition of the French ambassador, warrant may be issued for his apprehension; and any justice before whom he may be brought is authorized to commit him to gaol until delivered up pursuant to such requisition. The Secretary of State may then order the person committed to be delivered up to the person authorized to receive him. But no justice is to issue a warrant for the apprehension of any such offender unless the party applying is the bearer of a warrant, issued by a judge or competent authority in France, authenticated in such a manner as would justify the arrest of the supposed offender in France upon the same charge. If the prisoner so committed shall not be conveyed out of her majesty's dominions within two months from the time of his committal, any of her majesty's judges, on application made to them, and after notice of such application has been sent to the Secretary of State (or to the acting governor in a colony), may order such person to be discharged, unless good cause shall be shown to the contrary.

Proceedings are similar in respect of American offenders, but the description of offences is different; with France the convention applies to *murder, attempt to murder, and fraudulent bankruptcy*; but with the United States the convention does not include *fraudulent bankruptcy*, but in addition to murder, and attempts to murder, includes *piracy, arson, and robbery*.

By 6 & 7 V. c. 34, offenders charged with any offence amounting to treason or felony, escaping from the colonies into the



United Kingdom, or from the United Kingdom to any of our colonies, and against whom warrants have been issued, may be apprehended by the proper officers, after the warrant has been endorsed, in Great Britain by one of the Secretaries of State, in Ireland by the Chief Secretary, and in the colonies by one of the judges of the superior law courts. But any person committed under this act, who shall not be sent by the readiest way to the place where the offence is alleged to have been committed within two calendar months, may apply to the judge for his discharge, which is to be granted unless sufficient cause be shown for the contrary; and if not indicted within six months after his arrival in that part of her majesty's dominions in which he is charged to have committed the offence, or if upon trial he is acquitted, he is, if he so desire, to be sent back to the place where he was apprehended, free of cost, and with as little delay as possible:

## CHAPTER I.

### *Offences against Religion and Public Morals.*

THE several offences, either directly or by consequence, injurious to society, and punishable by the laws of England, may be distributed under the following heads.—*First*, those which are more immediately hurtful to religion and public morals; *secondly*, such as violate the laws of nations; *thirdly*, such as more especially affect the sovereign, or the order, security, and government of the State; *fourthly*, such as more directly endanger the public interests and prosperity, as offences against public justice, trade, health, and police; and, *lastly*, such as derogate from the safety, rights, and enjoyments of individuals, and in the preservation and vindication of which the community is interested. The offences under the first division will occupy the present chapter, and be distributed under the following heads:—

1. *Apostacy.*
2. *Heresy.*
3. *Reviling the Ordinances of the Church.*
4. *Jesuits and Religious Societies.*
5. *Blasphemy.*
6. *Profane Swearing and Indecent Exhibitions.*
7. *Simony.*
8. *Profanation of the Sabbath.*
9. *Witchcraft, Astrology, and Religious Imposture.*
10. *Drunkenness, Lewdness, and Female Prostitution.*
11. *Buying and Selling Wives.*
12. *Vagrancy.*

## I. APOSTACY.

This offence can only take place in such as have once professed the true religion, and consists of a total renunciation of Christianity, by embracing either a false religion or the repudiation of all religion. By the 9 & 10 W. 3, c. 32, if any person educated in or having made profession of the Christian religion shall, by writing, preaching, teaching, or advised speaking deny the Christian religion to be true, or the Holy Scriptures to be of divine authority, he shall, upon the *first* offence, be rendered incapable to hold any office or place of trust; and, for the *second*, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, and suffer three years' imprisonment without bail. To give room, however, for repentance, if, within four months after the first conviction, the delinquent will, in open court, publicly renounce his errors, he is discharged for that *once* from all disabilities.

Two or more credible witnesses are necessary to convict of apostacy; and no person can be prosecuted under this act for *words spoken*, unless the information be given on oath before a justice within four days, and the prosecution be within three months after the information, s. 2.

## II. HERESY,

Which consists not in the total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. By 9 & 10 W. 3, c. 32, if any person educated in the Christian religion, or professing the same, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or maintain that there be more gods than one, he shall suffer the same penalties as described in the case of *Apostacy*. But this statute has been repealed, so far as it affects Unitarians only, by the 53 G. 3, c. 160. Prosecutions for reviling the Trinity seem to have been generally framed on the construction of the common law; the 9 & 10 W. 3 did not alter the common law as to the offence of blasphemy, but gave a cumulative punishment. And it seems also, the 53 G. 3 does not alter the common law, but only removes the penalties imposed upon persons denying the Trinity by 9 & 10 W. 3, c. 32, and extends to such persons the benefits conferred upon all other Protestant Dissenters by 1 W. & M. c. 18, *Rex v. Waddington*, 1 B. & C. 26.

## III. REVILING THE CHURCH ORDINANCES.

By 2 & 3 E. 6, & 1 Eliz. c. 2, it is provided, that whoever reviles the sacrament of the Lord's Supper shall be punished by fine and imprisonment. By the 1 Eliz. c. 2, if any minister

Speak anything in derogation of the Book of Common Prayer, he shall, if not beneficed, be imprisoned one year for the *first* offence, and for life for the second; and if he be beneficed, he shall, for the first offence, be imprisoned six months, and forfeit a year's value of his benefice; for the *second* offence he shall be deprived, and suffer one year's imprisonment; and for the *third*, he shall be deprived and imprisoned for life.

And if any person whatever shall, in *plays, songs*, or other *open words*, speak anything in derogation of the Book of Common Prayer, or shall forcibly prevent the reading of it, or cause any other service to be read in its stead, he shall forfeit for the *first* offence, 100 marks; for the *second*, 400; and for the *third* shall forfeit all his goods and chattels, and be imprisoned for life.

Of these statutes, however, the 1 Eliz. c. 2, is repealed, so far as it affects Protestant Dissenters, by 31 G. 3, c. 32.

#### IV. JESUITS AND RELIGIOUS SOCIETIES.

By 10 G. 4, c. 7, s. 29, Jesuits, or members of religious orders or societies of the Church of Rome, bound by monastic or religious vows, coming into the kingdom, or having obtained the Secretary of State's licence to come, not departing within twenty days after the expiration of the time mentioned in such licence; or any person within any part of the kingdom becoming a Jesuit or member of any society of the Church of Rome; any of these offences subjects the offender to banishment for life.

#### V. BLASPHEMY.

This is an offence that consists in denying the being and providence of God, or in uttering contumelious reproaches of Jesus Christ, or in profane scoffing at the Holy Scriptures, or exposing them to contempt and ridicule: these offences are punishable by fine and imprisonment, or other infamous corporal infliction.

It is not lawful even to publish a *correct* account of the proceedings in a court of justice, if it contains matter of a scandalous, blasphemous, or indecent nature, 3 B. & A. 167; and a publication stating Jesus Christ to be an impostor, and a murderer in principle, is a libel at common law, 1 B. & C. 26.

The general law as to this offence, as collected from 2 *Str.* 834, *Fitzg.* 64, *Barn. R.* 162, is, that it is illegal to write against Christianity in general; that it is also illegal to write against any one of its evidences or doctrines, so as to manifest a *malicious* design to undermine it altogether; but that it is not illegal to write with decency on controversial points, whereby it is possible some articles of belief may be affected.

By the 60 G. 3, c. 8, on the conviction of any person for the

composing, printing, or publishing of any *blasphemous* or *seditions* libel, the court may order the seizure of all copies of the libel; or the officers are empowered to enter, by force, in the day-time, any premises containing copies of the same. The punishment by *banishment* for a second offence under the statute is repealed, 1 W. 4, c. 73, but additional securities are required, as already stated (p. 187), prior to the publication of political works.

#### VI. PROFANE SWEARING AND INDECENT EXHIBITIONS.

By 19 G. 2, c. 21, every labourer, soldier, or sailor, profanely cursing or swearing, forfeits 1s.; every other person under the degree of a gentleman, 2s.; and every gentleman, or person of superior rank, 5s. to the poor of the parish: on the second conviction, double; for every subsequent offence, treble the sum first forfeited, with all charges of conviction; and in default of payment the offender may be sent to the House of Correction for ten days; or where a common sailor or soldier, upon conviction, is unable to pay the penalty, he may be set in the stocks for one hour for every offence.

By 3 Jac. 1, c. 21, it is provided, that if in any *stage-play*, *interlude*, or *show*, the name of the Holy Trinity, or any person therein, be jestingly or profanely used, the offender shall forfeit £10, half to the king, half to the informer.

By 2 & 3 V. c. 47, s. 54, if any person within the limits of the metropolis district, shall sell, or distribute, or offer for sale, or distribution, or exhibit to public view, any *profane*, *indecent*, or *obscene* book, paper, print, drawing, painting, or representation; or sing any profane or indecent book or ballad, or *write* or *draw* any indecent or obscene word, figure or representation, or use any profane, indecent, or obscene language, to the annoyance of the inhabitants or passengers, such offender may be forthwith apprehended without warrant by the police, and is liable to a fine not exceeding *forty shillings*.

#### VII. SIMONY.

This offence, which is the sale of spiritual preferment, consists in the corrupt presentation to an ecclesiastical benefice for reward, gift, profit, or benefit. This is not an offence punishable, in a criminal way, at common law; but, by 31 Eliz. c. 6, it is provided, if any patron, for money, or other profitable consideration, or promise, present to any ecclesiastical benefice, or dignity, both the giver and taker forfeit two years' value of the benefice or dignity; one moiety to the king, and the other to the person who sues for the same. Corrupt elections and resignations in colleges, hospitals, and other eleemosynary corporations, are punishable with forfeiture of double the value, va-

cating the place or office, and the lapse of the right of election, for that turn, to the crown.

Though to purchase a *presentation*, the living being actually vacant, is undoubtedly simony, Lord Hardwicke held, that the *sale of an advowson*, during a vacancy, is not within the statute; and it has been decided, though with difference of opinion, that a bond to resign a school or freehold office, at the request of the patron, is valid. In the case of *Fletcher v. Lord Soules*, on an appeal to the house of lords, it was decided, after elaborate argument, that a bond entered into by a parson, to resign a living, in order that a particular person may, at a future period, be presented, is simoniacal and illegal. Seven of the judges, after twelve months' deliberation, were for the affirmative of this point, three for the negative, and two, Mr. Justice Bailey and Mr. Justice Littledale, could not make up their minds either way.

#### VIII. PROFANATION OF THE SABBATH.

The exception made by 27 H. 6, c. 5, of the four Sundays in harvest, and allowing fairs and markets to be held on those days, is abolished by 13 V. c. 23.

By 1 Car. 1, c. 1, no person shall assemble out of their parishes for any sport on Sunday, nor in their parishes use any bull or bear baiting, interlude, play, or other unlawful exercise or pastime: penalty, 3s. 4d. to the poor.

By 29 Car. 2, c. 7, no person, on pain of forfeiting 5s., is allowed to *work* on the Lord's day (except works of necessity or charity), nor use any boat or barge, or expose any goods to sale, except meat in public-houses, or milk and mackerel at certain hours. Milk may be sold before nine in the morning, and after four in the afternoon. Mackerel may be sold *before* and *after* divine service.

By 3 Car. 1, c. 1, any drover, carrier, or the like, travelling or coming to his inn or lodging on Sunday, forfeits 20s. A *van* travelling on Sunday between London and York is within the statute, *Middleton, ex parte*, 3 B. & C. 164; but a *stage-coach* travelling on the Lord's day is not illegal, *Sauleman v. Breach*, 7 B. & C. 96.

Forty watermen are permitted to ply on the Thames between Vauxhall and Limehouse on Sunday. Fish carriages are allowed to travel on Sunday, either laden or returning empty. Persons publicly crying, or exposing to sale, herbs, forfeit them to the poor. Butchers killing or selling any victual, forfeit 6s. 8d.

No writ, process, or warrant, except in cases of treason, felony, or breach of the peace, shall be served on Sunday, on pain that the same shall be void, and the party serving the same be liable to an action for damages. All contracts made on Sunday are void; but a sale of goods made on Sunday, which is not made

in the exercise of the *ordinary calling* of the vendor, is not void under the statute, 1 *Taunt.* 131. And the price of goods bought on Sunday has been held recoverable, the defendant having kept them, and subsequently promised to pay for them, 6 *Bing.* 653.

By 1 & 2 W. 4, c. 32, s. 3, no person shall, on Sunday, or Christmas-day, kill any game, or use any gun, dog, net, or engine, for that purpose, on pain of forfeiting any sum not exceeding £5. together with the full costs of conviction.

The 21 G. 3, c. 49, was passed to restrain a practice very prevalent at the time in London and Westminster: it enacts, that if a house, room, or place be opened upon Sunday for any public entertainment, or for debating upon any subject, to which persons are admitted by *money* or *tickets*, the keepers of it shall forfeit £200 to any person who will prosecute; the manager or president £100, and the receiver of the money or tickets, £50, and every person *printing* an advertisement of such meeting forfeits £50.

See *Licensed Victuallers and Bakers.* •

#### IX. WITCHCRAFT, ASTROLOGY, AND IMPOSTURE.

There is nothing more common in the earlier periods of our history than the imputation of *witchcraft* against persons of the highest rank: and the anxiety manifested by the individuals to clear themselves, shows both the credit and importance attached to these inventions. Most people are familiar with the case of the Duchess of Gloucester, in the reign of Henry VI.; and that of Jane Shore, in the reign of Edward V. So late as the reign of James I., witchcraft was considered a crime actually existing, and punished with death: under this law, many persons were sacrificed to the prejudices of their neighbours and their own illusions; not a few having, by some means, confessed their imaginary guilt at the gallows. The laws against witchcraft were in force in Ireland till recently, and are only repealed by 1 & 2 G. 4, c. 18.

Pretending to exercise any kind of *witchcraft*, *sorcery*, *enchantment*, or *conjuraton*, or undertaking to tell fortunes, or pretending from skill or any occult science to discover where *stolen* goods may be found, subjects to imprisonment for one year, and such further punishment by fine or imprisonment as the court thinks fit, 9 G. 2, c. 5, s. 4; 56 G. 3, c. 138, s. 2.

Practisers of the occult sciences are also punishable under 5 G. 4, c. 83; and persons pretending to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive any of her majesty's subjects, are punishable as rogues and vagabonds.

A similar species of offence is that of RELIGIOUS IMPOSTURE, by

pretending to an extraordinary commission from heaven, thereby abusing and terrifying people with groundless apprehensions. This offence is punishable by fine, imprisonment, and infamous corporal infliction.

#### X. DRUNKENNESS, LEWDNESS, FEMALE PROSTITUTION.

*Drunkenness* is punishable by 21 Jac. 1, c. 7, with the penalty of 5s., or sitting six hours in the stocks, if unable to pay the penalty. Upon a second offence, the offender may be bound in a recognizance of £10, with two sureties for good behaviour, but conviction must, in all cases, be had in six weeks.

*Open and notorious lewdness*, either by frequenting houses of ill fame, which is an indictable offence, or by indecently exposing the person to public view, is punishable with fine and imprisonment.

Within the limits of the metropolis district, every person found DRUNK in any public thoroughfare, and guilty of *riotous* or *indecent* behaviour, may be fined any sum not above 40s. for every offence, or if the magistrate think fit, instead of a pecuniary fine, may be committed to the house of correction for not exceeding seven days, 2 & 3 V. c. 47, s. 58.

Under 34 E. 3, c. 1, justices of the peace may hold to bail all that be not of *good fame*, and compel them to give sufficient surety for their good behaviour: which ancient statute has been lately revived in the metropolis for the purpose of bringing under magisterial notice the keepers of notorious brothels.

Every common PROSTITUTE or nightwalker, loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation, to the annoyance of the inhabitants or passengers, may be apprehended without warrant by the police of the metropolis within their jurisdiction, and is liable to a penalty of 40s., 2 & 3 V. c. 47, s. 54.

#### XI. BUYING AND SELLING WIVES.

The Court of Queen's Bench is the guardian of public morals, and has the judicial animadversion of offences against public decency and good behaviour. In that court an information was granted against a number of persons concerned in assigning a young girl to a gentleman, under pretence of learning music, but for the purpose of prostitution, 3 Bur. 1438. There is no doubt that the vulgar and brutal exhibition, too often tolerated, of a man *selling his wife*, and delivering her in a halter, is a misdemeanor, both in the buyer and seller, punishable with fine and imprisonment. In a more mitigated outrage of this sort than a public sale, namely, where a husband formally assigned his wife over to another man, Lord Mansfield directed a prose-

cution for the transaction, as being notoriously against public decency and good manners. All such acts are public misdemeanors, and punishable either by an information or by an indictment preferred before a grand jury at the assizes or quarter sessions.

## XII. VAGRANCY.

Offenders under this head form a numerous class in society, and are described by the Vagrant Act, the 5 G. 4, c. 83, under the denominations of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues.

### I. Who is deemed an *idle and disorderly person*?

Every person being able, wholly or partly, to maintain himself or family, by work or other means, and neglecting so to do, whereby they become chargeable to the parish; every person returning to and becoming chargeable to any parish, from whence he shall have been legally removed, unless he produce a certificate from the churchwarden and overseer, acknowledging him to be settled there; every petty hawker\* or pedlar wandering abroad and trading without being licensed; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner: and, lastly, every person wandering abroad, or placing himself in any public place, court, or passage, to beg, or causing any child so to do: all these are deemed *idle and disorderly persons*, punishable for any term not exceeding a calendar month, by imprisonment in the house of correction.

### II. Who shall be deemed a *rogue and vagabond*?

Every person committing any of the offences mentioned in the last paragraph a *second* time; every person pretending to palmistry or to tell fortunes; lodging in any outhouse or in the open air, not having any visible means of subsistence, and not giving a good account of himself; exposing to view, in any street or public place any *obscene print, picture, or other indecent exhibition*; wilfully and obscenely *exposing his person* in any street or public place, or in view thereof, with intent to insult any female; endeavouring, by the exposure of wounds and deformities, to obtain alms; going about to collect alms or charitable contributions under a fraudulent pretence; running away and leaving his wife or children chargeable to the parish; *playing or betting* in any street or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance; having in his custody any pick-lock, or other implement, with *intent feloniously to break house or building*, or being *armed* with any gun or offensive weapon, with *intent to commit any felonious act*; found in or upon any house or building, or in any inclosed yard, garden, or area, for any *unlawful purpose*; every *suspected person* or *reputed thief*



frequenting any river, or navigable stream, dock, basin, wharf, quay, warehouse, or any street or way adjacent, with *intent* to commit felony; and, lastly, every person apprehended as idle and disorderly, and violently resisting such apprehension, and being subsequently convicted of being idle and disorderly: all these are ROGUES AND VAGABONDS, and a justice of peace may commit such offenders to the house of correction for any time not exceeding *three calendar months*.

### III. Who is deemed an *incorrigible rogue*?

Every person escaping out of confinement before the expiration of the time for which he has been committed under the Vagrant Act; or committing an offence which subjects him a *second* time to be convicted as a rogue and vagabond; and, lastly, every person apprehended as a rogue and vagabond, violently resisting such apprehension, and being subsequently convicted of being a rogue and vagabond: all these are deemed INCORRIGIBLE ROGUES; and may be committed to the house of correction till the next general or quarter sessions of the peace, and then be further imprisoned for any period not exceeding one year, and, not being a female, whipped.

Any person may apprehend offenders under this act, and constables neglecting to do their duty, or persons hindering them from doing their duty, forfeit £5.

## CHAPTER II.

### *Offences against the Law of Nations.*

THE law of nations, or international law, consists of a system of rules, deduced from usage and the principles of natural justice, intended for the regulation of the mutual intercourse of nations in peace and war. International law is founded, or so intended, on the principle that the different nations ought to do to each other in the time of peace as much good, and in time of war as little harm, as may be possible without injuring their own proper interests; and such law in its entire extent comprehends the principles of national independence, the privileges of ambassadors, consuls, and inferior ministers; the commerce of the subjects of each State with those of others; the grounds of just war and the mode of conducting it; the mutual duties of belligerents and neutrals in regard to search, blockade, the treatment of prisoners, and other incidents pending hostilities; the rights of conquest; the force of an armistice, of safe conducts and passports; the nature of alliances, and the obligations and construction of treaties.

The chief offences, however, of which the English laws take

cognizance, and that fall within our notice, are limited to three kinds,—1. Violation of safe conducts; 2: Infringement of the rights of ambassadors; and, 3. Piracy.

As to the first, violation of *safe conducts* or *passports*, it is enacted, by 31 H. 6, c. 4, that if any of the king's subjects molest, spoil, or rob any foreigner in amity, league, or truce, or under safe conduct, the Lord Chancellor, with any of the justices of either the King's Bench or Common Pleas, may cause full restitution and amends to be made to the party injured.

The *rights of ambassadors* are fully protected by the 7 Anne, c. 12, which enacts, that "an ambassador or other *public minister*, or his domestics, registered in the Secretary of State's office, are not to be arrested; if they are, the process is void, and the persons suing out and executing it shall suffer such penalties and corporal punishment as the Lord Chancellor or either of the chief justices think fit." Neither can the goods of an ambassador or his servant be distrained, whether a foreigner or British subject, provided he is not a merchant or trader within the bankrupt laws.

A resident merchant, who acts as consul to a foreign prince, is not a *public minister* entitled to the privileges of an ambassador, 3 M. & S. 284.

The third offence against international law is **PIRACY**; which is a robbery on the high seas, and not in any creek or arm of the sea, such being within the jurisdiction of the adjoining country. The piracy must be on persons in amity with this country and without the authority of any State. Intent is an ingredient in this as in almost every other offence: for a person accused of piracy may show that he captured the vessel, or took the goods, thinking that they belonged to a State at war with England. Those also are pirates, who, owing allegiance to the crown of Britain, during war commit hostilities against her majesty's subjects, by colour of any commission from the enemy, or adhere or give aid to the enemy upon the sea. All acts of robbery and depredation on the high seas, which on land would have amounted to felony, are deemed piracies. Boarding a merchant-vessel, though without carrying her off, or seizing any of her goods; or the assisting, trading with, or combining with known pirates, are equally acts of piracy.

Piracy is punishable by 1 V. c. 88, which repeals or amends former statutes from Henry VIII. to George II. When murder is attempted, or any wound is inflicted dangerous to life, either at the time, before, or after the commission of the offence, the punishment is death; but for simple piracy the punishment is mitigated to transportation for life, or not less than fifteen years, or imprisonment for three years.

Persons engaged or assisting in the African slave trade, are guilty of piracy, subject to transportation for life, or fifteen

years, or imprisonment for three years, 5 G. 4, c. 113; 1 V. c. 91.

There are provisions for rewarding seamen who act bravely in capturing or resisting piratical vessels, and commanders who act cowardly are punishable by the forfeiture of their wages and six months' imprisonment.

The 6 G. 4, c. 49, for encouraging the capture of piratical vessels, provides that the officers, seamen, marines, and others actually on board any king's ship at the taking or destroying any piratical vessel shall receive the sum of £20 for each pirate taken, or killed during the attack, and the sum of £5 for every other man of the crew, not taken or killed, who shall have been alive on board the pirate ship at the beginning of the engagement. But this act is amended by 13 & 14 V. c. 26, in respect of *rewards* for the capture of pirates, the Courts of Admiralty being empowered to determine whether the persons attacked or engaged as pirates *were pirates*; also the number of pirates and piratical vessels. Property found in possession of pirates belonging to British subjects is to be restored on payment of one-eighth part of its value.

Piracies are triable at the Central Criminal Court, or by commission in any county in England.

### CHAPTER III.

#### *Treason.*

At common law, the nature and constituents of high treason were vague and undefined, and acts tending merely to diminish the dignity of or respect towards the crown were held to be within its scope; so that if a man became *popular* it was construed to be encroaching on the prerogatives of the sovereign, and held to be treason. But an end was put to constructive treason by the 25 E. 3, c. 2, in which those acts amounting to treason are distinctly specified. The provisions of this statute are confirmed and expanded by 36 G. 3, c. 7, which last is made perpetual, as to sections 1, 5, 6 (the rest is expired), by 57 G. 3, c. 6, s. 1. From these acts the law of treason may be thus stated:—

1. It is treason to *compass, imagine, invent, devise, or intend* death or destruction, or any bodily harm tending to death or destruction, or to maim, wound, imprison, or restrain the person of the king, his heirs, or successors; and to express, utter, or declare of such compassing, inventions, devices or intentions, or any of them. But such compassing, &c., must be manifested by some *overt act*, as by providing weapons, ammunition, or poison, or by sending letters to excite others to *join* in the en-

terprise. In the case of the regicides, the indictment charged that they did traitorously compass and imagine the death of the king. And the taking off his head was laid, among others, as an *overt act* of compassing.

*Overt acts* are evidence of intentions or designs in progress; and, according to Mr. Justice Foster, words may be, when uttered in contemplation of a traitorous purpose actually on foot and in prosecution. By the Criminal Law Commissioners an overt act is said to be "any act of conspiring or conferring, or consulting with, or advising, persuading, counselling, commanding, or inciting any person, or any other act, measures, or means whatsoever done, taken, used or assented to, towards and for the purpose of effecting the traitorous intentions, or act charged," *Fifth Criminal Law Report*.

2. To have *carnal knowledge* of the queen consort, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir, is treason. In a criminal intercourse with the queen, it is immaterial whether it be with or without force: but it is high treason in both parties if consenting.

3. To *levy war* against the king in his realm is treason, by statute of Edward III., as well as the common law. But, as in the first case of treason, there must be an *overt act*; a mere conspiracy to levy war is no overt act, unless war be actually waged; though, if a war be waged, then the conspirators are all traitors, although they are not in arms. Also this species of treason is incurred by *taking arms* not only to dethrone the queen regent, but under pretence to reform religion, or the laws, or to remove evil counsellors, or other grievances, real or imaginary.

Upon the trial of Lord George Gordon, Lord Mansfield declared that it was the unanimous opinion of the court, that an attempt by *intimidation and violence*, to force the repeal of a law, was levying war against the king, and high treason, *Doug.* 570.

4. To *adhere to the king's enemies* within the realm, or give them aid in the realm, or elsewhere, is treason. This must likewise be proved by *overt act*, as by furnishing money, arms, ammunition, or provision, or sending intelligence to the queen's enemies.

5. To *counterfeit* the great seal, privy seal, privy signet, or royal sign manual, is treason.

6. The last species of treason, ascertained by the 25 E. 3, is, if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, or justices of assize, and all other justices, assigned to hear and determine, being in their places, such person is guilty of treason. This clause extends only to the *actual killing*, and only to the officers therein specified; so that the barons of the Exchequer, as such, are not included.

By 1 Anne, c. 17, to endeavour to deprive or hinder any per-

son, being the next in succession to the crown, according to the limitation of the act of parliament, from succeeding to the crown, and attempt the same by any overt act, such offence is high treason. So, also, by 6 Anne, c. 7, if any person, by writing or printing, maintain and affirm that any other person has any right or title to the crown, otherwise than according to the act of settlement; or that the sovereign of this realm, with the authority of parliament, is not able to make laws and statutes to bind the crown and the succession, it is treason.

By 3 & 4 V. c. 52, s. 4, being married to, or concerned in procuring the marriage of, any issue of her present majesty whilst such issue are under eighteen (in case the crown shall have descended to any such before that age), without the consent, in writing, of the regent, and the assent of both houses of parliament, is a capital treason.

It is also a treasonable offence the knowing any person to have committed any of the preceding treasons, and receiving, relieving, comforting, or assisting him, or aiding his escape from custody.

## II. TRIAL AND PUNISHMENT OF TRAITORS.

Considering that, in prosecutions for high treason, the accused has the whole power and influence of the crown to contend against, with, perhaps, public feeling strongly excited against him, the law has humanely provided various helps and indulgences, which do not extend to other crimes and misdemeanors.

Thus, in case of high treason, or misprision of such treason, it is enacted, under 7 W. 3, c. 3, that no person shall be tried for such treason, except an attempt to assassinate the king, unless the indictment be found *within* three years after the offence has been committed.

By 7 Anne, c. 21, any person indicted for high treason, or misprision thereof, shall have not only a copy of the indictment, but a list of all the witnesses to be produced, and of the jurors empannelled, with their professions, and places of abode, delivered to him ten days before the trial, and in presence of two witnesses, the better to prepare him to make his challenges and defence. The *practice* is, to deliver a copy of the indictment, and the list of witnesses and jurors, ten clear days, exclusive of the day of delivery and the day of trial, and the intervening Sunday, previous to the trial.

All persons, too, accused of high treason are entitled to have two counsel allowed them by the court, and the same privilege is granted on impeachment by the house of commons.

But these statutory indulgences have been withdrawn by a subsequent statute in cases of traitorous attempts directed against the *life* of the sovereign, and by the 39 & 40 G. 3, c. 93, it is provided that, in all cases of high treason, in which the overt act

alleged in the indictment is any direct attempt on the life or person of the king, the accused, in that case, shall be indicted, arraigned, tried, and attainted, as if he were charged with *murder*; but, upon conviction, judgment is to be given, and execution done, as in other cases of high treason.

The punishment for high treason, besides attainder, forfeiture, and corruption of blood, was, till lately, a barbarous exhibition. That in high treason, not relating to the coin, was, "that the offender be drawn to the place of execution, and be there hanged by the neck, and cut down alive, that his entrails be taken out and burned before his face, that his head be cut off, that his body be cut into four quarters, and that his head and quarters be at the king's disposal." In lieu of this punishment, by 54 G. 3, c. 146, the sentence to be awarded is drawing on a hurdle, hanging by the neck till dead, beheading, and quartering. But, after judgment, the queen may direct, by warrant, that the traitor shall not be drawn nor hanged, but be beheaded alive; and the warrant may direct how the body shall be disposed of.

Before the 30 G. 3, c. 48, from the remotest times, women, for every species of treason, were sentenced to be burned alive; but now they are to be drawn to the place of execution and hanged.

By 1 V. c. 84, ss. 2, 3, forging the great seal, or the royal sign manual, the seals appointed to be used in Scotland, and the great and privy seals of Ireland, are not treasons punishable with death, but transportation for life, or not less than seven years, or imprisonment not exceeding four nor less than two years.

### III. PROTECTION OF HER MAJESTY'S PERSON.

Repeated attempts on the life of the queen, or to alarm her majesty, often apparently from mere desire of notoriety, gave rise, in 1842, to the 5 & 6 V. c. 51, for the royal protection.

The act, without altering the statutes relative to high treason, provides, that if any person shall wilfully discharge or attempt to discharge, or point, aim, or present at or near to the person of the queen, any gun, pistol, or any other description of fire-arms, or other arms whatsoever, whether the same shall or shall not contain any explosive or destructive material, or shall discharge or cause to be discharged, or attempt to discharge or cause to be discharged, any explosive substance or material near to the person of the queen; or if any person shall wilfully strike or strike at, or attempt to strike or to strike at, the person of the queen, with *any offensive weapon*, or in any other manner whatsoever; or if any person shall wilfully throw or attempt to throw any substance, matter, or thing whatsoever at or upon the person of the queen, with intent in any of the cases aforesaid to injure

the person of the queen, or with intent in any of the cases aforesaid to break the public peace, or whereby the public peace may be endangered, or with intent in any of the cases aforesaid to alarm her majesty; or if any person shall, near to the person of the queen, wilfully produce or have any gun, pistol, or any other description of fire-arms, or other arms whatsoever, or any explosive, destructive, or dangerous matter or thing whatsoever, with intent to use the same to injure the person of the queen, or to alarm her majesty, every such person so offending shall be guilty of a high misdemeanor, and being convicted, shall be liable, at the discretion of the court before which the offender has been tried, to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, for any period not exceeding three years, and during the period of such imprisonment to be publicly or privately whipped, as often and in such manner and form as the court shall direct, not exceeding thrice.

#### IV. CROWN AND GOVERNMENT SECURITY ACT.

Doubts having arisen in 1848, on the part of the Government, whether the unrepealed enactments of the 36 G. 3, c. 7, and their continuation by 57 G. 3, c. 6, extended to Ireland, they were removed by the direct extension of them to that kingdom under the 11 V. c. 12. By the 11 V. certain treasons already mentioned, which had been heretofore capital and punishable with death, were mitigated to felonies, and subjected to transportation or imprisonment. Accordingly, by the third section, it is provided, that—

“ If any person whatsoever after the passing of this act shall, within the United Kingdom or without, compass, imagine, invent, devise or intend to deprive or depose our most gracious Lady the queen, her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of her majesty's dominions and countries, or to levy war against her majesty, her heirs, or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put force against, or constraint upon, or in order to intimidate or overawe both houses, or either house, of parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other of her majesty's dominions and countries under the obeisance of her majesty, her heirs or successors, and such compassings, imaginations, inventions, devices or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by *open and advised speaking*, or by any covert act or deed, every person so offending shall be guilty of FELONY, and, being convicted thereof,

shall be liable at the discretion of the court to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct."

The insertion of the words "open and advised speaking" have been complained of, as establishing a novelty in treasonable offences; but, as Mr. Wise has remarked (*Law on Riots*, 100), on Mr. Justice Foster's opinion, and other legal authorities, words already constituted an overt act of treason if tending to forward or extend traitorous designs. Against a too stringent enforcement of the clause on "open and advised speaking," the fourth clause enacts that the information for such offence must be on oath to one or more magistrates, or the sheriff or his deputy in Scotland, within *six* days after utterance, and the warrant be issued within ten days after the information; and within two years after the passing of the act. Conviction not to ensue unless on the confession of the accused in open court, or unless the alleged words spoken be proved by two credible witnesses.

Doubts having arisen in 1849, on the conviction of Smith O'Brien and others, as to the power of the crown to *mitigate* the punishment of offenders under judgment of death for treason in Ireland, they were removed by the 12 & 13 V. c. 27, empowering the crown to order the transportation of any offender under judgment of death to whom mercy has been extended.

## CHAPTER IV.

### *Coin and Public Offices.*

#### I. OFFENCES AGAINST THE COIN.

IN the session of 1832, the coin laws were consolidated and mitigated; and, in lieu of the punishment of death, transportation for life or lesser term, or imprisonment, was substituted. The act now in force, 2 W. 4, c. 34, makes the following classification of offences, and their punishments:—

Counterfeiting the gold or silver coin, transportation for life, or not less than seven years; or imprisonment for not exceeding four years; such offence to be deemed complete, although the coin be not in a fit state to be uttered, or the counterfeiting unfinished.

Colouring or gilding counterfeit coin, or any pieces of metal, with intent to make them pass for gold or silver coin; colouring or altering copper coin, with intent to make it pass for higher



coin; transportation for life, or not less than seven years, or imprisonment for not exceeding four years.

Impairing, diminishing, or lightening the gold and silver coin, with intent to make the same pass for the queen's current coin, transportation for not exceeding fourteen nor less than seven years, or imprisonment not exceeding three years.

Buying or selling, receiving or paying, or offering counterfeit gold or silver coin for lower value than its denomination; importing counterfeit coin from beyond seas, transportation for life, or not less than seven years, or imprisonment for not exceeding four years.

Knowingly tendering or uttering counterfeit gold or silver coin, imprisonment for not exceeding one year the same offence, accompanied by possession of *other* counterfeit coin, or followed by a *second* uttering within ten days, imprisonment for not exceeding two years on a second conviction, transportation for life or not less than seven years, or imprisonment for not exceeding four years.

Having three or more counterfeit pieces of gold or silver coin in possession, with intent to utter the same, imprisonment for not exceeding three years, *second* conviction, transportation for life, or not less than seven, or imprisonment not exceeding four years.

Knowingly, and without lawful excuse (the proof of which rests on the party accused), making, mending, having in possession, or buying or selling any coining tools, conveying tools or bullion out of the Mint, transportation for life or not less than seven years, or imprisonment not exceeding four years.

Counterfeiting any current *copper* coin, or making, mending, or having in possession any coining tool, or buying, selling, &c, any copper coin, for lower value than its denomination imports, transportation not exceeding seven, or imprisonment not exceeding two years uttering counterfeit copper coin, or having in possession three or more pieces, imprisonment for not exceeding one year.

Gold or silver coin suspected to be fraudulently diminished, or counterfeit, may be cut or defaced by any person to whom it is tendered, and, if it prove to be so, the person tendering it must bear the loss, otherwise, the person who submits it to examination must receive it at the rate it was coined for, and any dispute to be finally determined by a justice. The tellers of the exchequer and receivers general of the revenue to break all counterfeit coin offered for payment.

Any person discovering any counterfeit coin, or coining tools, is to carry the same before a justice, and, on reasonable cause of suspicion, the justice may cause any place under the control of the suspected party to be searched either in the day or night;

and if any such coin or tool be found, the same to be seized for evidence, and afterwards delivered to the Mint.

The testimony of a Mint officer not essential to prove coin counterfeit; the evidence of any credible witness sufficient.

When imprisonment is awarded, the court may order hard labour or solitary confinement; subject to 1 V. c. 90, s. 5, limiting solitary confinement to one month at a time, and not exceeding three months in one year.

The term "queen's coin," includes all coin lawfully current in the United Kingdom; and wilfully having in any house, lodging, apartment, field, or other place, whether belonging to or occupied by the accused or not, and whether for his own use or benefit or that of another, is deemed having in possession within the meaning of the act.

In the indictment by 14 & 15 V. c. 100, s. 18, both coin and bank notes may be described simply as money.

Various acts were in force to restrain the exportation of gold or silver plate, or bullion; but these are repealed by the 59 G. 3, c. 49, and the gold and silver coin of the realm, and also the bullion produced by melting (but not the clippings, or bullion produced by melting the clippings of the coin), may now be manufactured or exported without restraint or penalty.

**DEFACING THE COIN.**—To prevent the practice of defacing the coin of the realm for advertising, or other purposes, or bending it, the 16 & 17 V. c. 102, enacts that any person stamping any name or words on any current gold, silver, or copper coin, or who shall use any instrument for bending the same, shall be deemed guilty of a misdemeanor in England and Ireland, and in Scotland of an offence, and be liable to fine and imprisonment at the discretion of the court. No tender of any coin so defaced, stamped, or bent, to be allowed as a legal tender, and every person uttering such coin to be liable to a penalty not exceeding 40s.; but no proceeding to be taken except by the attorney-general in England and Ireland, or by the lord-advocate in Scotland.

## II. DESTROYING PUBLIC SHIPS OR EMBEZZLING STORES.

By 12 G. 3, c. 24, it is a capital offence to set on fire or destroy any of her majesty's ships of war, or destroy the queen's arsenals, magazines, dock-yards, rope-yards, victualling offices, or materials appertaining thereto; or military, naval, or victualling stores, or to procure, abet, or assist in such offences.

By 39 & 40 G. 3, c. 89, persons other than contractors, receiving or having stores of war in their possession, may be transported for fourteen years; and, by fourth section, defacing marks denoting stores to be the king's property, for the purpose of concealment, is subject to a like punishment.

By 2 W. 4, c. 4, if any person employed in the *public service*

of his majesty, and entrusted with any chattel, money, or *valuable security*, embezzle the same, he is guilty of felony, subjecting to transportation for fourteen or not less than seven years, or to imprisonment, with or without hard labour, for not exceeding three years.

Under the words *valuable security* is included any tally, debenture, deed, bond, bill, note, warrant, or order, evidencing the title to money or to the payment of money, s. 2.

### III. SALE OF PUBLIC OFFICES.

The buying or selling of offices of a public nature has been considered as an offence *malum in se*, and indictable at common law, 1 *Russ.* 227.

By 5 & 6 E. 6, c. 16, if any person bargain or sell any office or any part thereof, to receive *money* or *other profit*, which office concerns the administration of justice, or the king's revenue or fortresses, or any clerkship in any court of record, he shall lose all right of nomination to such office; and the person offering such money or profit shall be disqualified for the office. Exceptions in favour of the judges, s. 7.

The provisions of this statute have been extended to Scotland and Ireland, and to all offices in the *gift of the crown*, and to the principal offices of any department of the Government in the United Kingdom and colonies, and to offices, commissions, &c., under the control of the East India Company, 49 G. 3, c. 126.

Bargaining, selling, or being in any manner concerned in the negotiation of such offices for gain, renders the parties guilty of misdemeanor, subjecting them to fine and imprisonment, ss. 3, 4. Opening or keeping any office for the brokerage of places is a misdemeanor, s. 5. If any person *advertise* or *publish* any office as set up for these purposes; or advertise or print the name of any agent or broker for the same, or any proposal relative thereto, he shall forfeit £50, with full costs, ss. 5, 6.

The act does not extend to the sale of commissions in the army for prices fixed by the queen's regulations. But to receive or pay, or agree so to do, a higher sum than the regulated price for the sale or exchange of a military commission, renders the parties guilty of misdemeanor, and forfeits the commission, which may be sold, and half the regulated value (not exceeding £500) given to the informer, and the other half applied as the queen shall direct.

### IV. SERVING FOREIGN STATES.

By 59 G. 3, c. 69, if any natural-born subject of the king enter into the service of any foreign State without the licence of his majesty, or order of council, or royal proclamation; or if

any person within the dominion of Great Britain, hire, or attempt to hire, any person to enlist in the service of any foreign State, such person is guilty of a misdemeanor, punishable with fine or imprisonment, or both, at the discretion of the court. The officers of the customs are empowered, on information upon oath, to detain any vessel having persons on board destined for such foreign service. Masters of vessels, knowingly having on board persons so engaged, to forfeit £50 for each individual. Persons fitting out any vessel, without licence, are guilty of a high misdemeanor, and the ship and stores become forfeited. Even the assisting any foreign State with warlike stores, without licence, is declared a misdemeanor, punishable with fine and imprisonment.

By 1 V. c. 20, the queen may grant to any officer, not being a natural-born subject, but who, at the time of passing the act, held the queen's commission in any other regiment, and was allowed to retain the same, the rank of colonel, major-general, or general; and to grant that aliens may enlist in her majesty's service; but the number of foreigners serving together at any one time in any regiment not to exceed *one for every fifty* natural-born subjects; and no such soldier to be capable of holding any higher rank than that of a *non-commissioned* officer.

## CHAPTER V.

### *Misprision and Contempt.*

ANOTHER class of offences, directed more immediately against the Government and course of justice, is entitled Misprision and Contempt, and includes those offences which are next under the degree of treason or felony.

*Misprision of treason* consists in the bare knowledge or concealment of treason, without any degree of assent thereto; if there be any semblance of participation therein, the offence is much more serious; as if a person goes to a treasonable meeting, knowing beforehand that a conspiracy is intended against the queen; or being in such company once by accident, and having heard such treasonable conspiracy, meets the same company again and hears more of it, but conceals it; this is an implied assent in law, and makes the concealer guilty of actual high treason.

By 1 & 2 Phil. & Mary, c. 10, to keep secret any treason committed, or intended to be committed, is punishable with loss of profits of lands during life, forfeiture of goods, and imprisonment for life.

*Misprision of felony* is the concealment of a felony, which a

man knows but never assented to; for if he assented, this makes him either principal or accessory.

*Concealing of treasure-trove*, which belongs to the queen or her grantees, is also a misprision, which was formerly punishable with death; but this, as well as the two preceding cases of misprision, are now punishable only by fine and imprisonment.

*Contempts* are such positive misprisions as consist in the commission of something which ought not to be done; among which the first and principal is the *maladministration of public officers*, by the embezzlement of the public money or otherwise. This is usually punished by parliamentary impeachment; and, although not a capital offence, subjects the delinquent to fine, imprisonment, exile, or perpetual disability for public office.

For the better punishment of malversation in office *abroad*, it is provided by 42 G. 3, c. 85, that all offences committed by any person employed abroad in the public service, in any station, civil or military, may be prosecuted in the Court of Queen's Bench in England; and, besides the punishment which the party would have suffered for the same crime in England, he is made liable, at the discretion of the court, to be adjudged incapable of ever serving her majesty again.

To accept a pension from a foreign prince, without the consent of the crown, is a contempt of the queen's government. So it is to drink to the *pious memory* of a traitor, or for a clergyman to absolve persons at the gallows who persist in the treasons for which they suffer. To give out scandalous stories concerning the queen, or falsely assert that she labours under the affliction of mental derangement, is criminal, and an indictable offence.

Threatening or reproachful words used to a judge sitting in the courts are a high contempt, punishable with fine, imprisonment, and corporal infliction. A judge sitting at *Nisi Prius* has the power of fining even a defendant conducting his own defence to a criminal charge, for contempt of the court, in uttering offensive matter in the course of that defence, 4 B. & A. 329.

If a man assault or threaten his adversary for suing him, a counsellor or attorney for being employed against him, a juror for his verdict, or a gaoler or other ministerial officer for keeping him in custody, he is liable to fine and imprisonment.

To endeavour to dissuade a witness from giving evidence, to disclose an examination before the privy council, or to advise a prisoner to stand mute, are all impediments of justice, and high contempts of the queen's courts, punishable with fine and imprisonment. It is also a high misprision, subject to fine and imprisonment, for a grand juror to disclose to a person indicted the evidence that appeared against him.

The power of courts of equity in cases of contempt, is regu-

lated by 1 W. 4, c. 36; and the poor and ignorant are no longer subject to indefinite imprisonment, neither can the merely obstinate so readily impede the course of justice. Under this act, where a party neglects from any cause to do what is required of him, the court is empowered to act for, and then *compulsorily* to discharge him. Imprisonment can only be used to gain an end, and that end gained, it will cease. Whenever a party omits to apply for his discharge, the court may release him, and pay the costs of the contempt out of any funds belonging to him over which it has power; or make them costs in the cause against him; or discharge him from contempt, and leave him in custody for the costs, which may afterwards be cleared under the Insolvent Act.

## CHAPTER VI.

### *Unlawful Societies, Oaths, and Sedition.*

THESE form the last class of offences directed against the Government which it will be necessary to notice, and which for the most part were unknown to our ancestors, having been chiefly made the subject of criminal jurisprudence by acts of parliament passed within the last fifty years. The statutes and parts of statutes relative to the description of offences included in this chapter, which have expired or been repealed, we shall pass over, and only notice such provisions as remain in force.

#### I. POLITICAL SOCIETIES AND ASSOCIATIONS.

The 39 G. 3, c. 79, was directed against certain associations, called societies of *United Englishmen, United Scotsmen, United Irishmen, and the London Corresponding Society*, and provides that every political society shall be deemed an unlawful combination and conspiracy, if any member thereof take any *oath* or *test* contrary to 37 G. 3, c. 123, or subscribe any declaration or engagement not required by law; if the *name* of any member be kept *secret*, or there be any committee, or select body, or any president, treasurer, delegate, secretary, or other officer, not known to the society at large; if the names of the committee, select body, and officers be not entered in regular books, open to the inspection of all the members; if the society be composed of divisions, parts, or branches, acting separately, and having distinct officers, or delegates elected to act for each part or branch: all societies so constituted and conducted are declared unlawful, and every member thereof and every person who shall correspond therewith, or by contribution of money or otherwise aid or abet the same, is subject, on conviction, either by infor-

mation before one justice, to a fine of £20 or three months imprisonment, or by indictment, to transportation for seven years. Exceptions in favour of societies for religious and charitable purposes, and Freemasons' lodges.

This statute clearly refers to societies having *oaths, tests, or any kind of secret proceedings, or having branches or divisions*; but does not refer to separate and independent societies, nor prohibit the appointment of delegates, or the correspondence of such insulated associations.

But the provisions of the 39 G. 3 are extended by the 57 G. 3, c. 19, enacting that every society or club that shall elect or employ any *committee, delegate, representative, or missionary*, to meet, confer, or communicate with any other *society or club*, or with any committee, delegate, representative, or missionary of such other club or society, or induce any person to become a member thereof, shall be subject to the penalties of 39 G. 3, namely, fine, imprisonment, or transportation. Being a member of such society, or corresponding therewith, or supporting it by money or otherwise, subjects to the like penalties and punishments. Persons licensed for the sale of ale, beer, wines, or spirits, suffering such unlawful societies to meet in their houses, liable to forfeit their licences; and any other person suffering such societies to meet in his house or apartment, is subject for the *first* offence to a penalty of £5, and for every subsequent offence is liable to the penalties and punishments of the 39 G. 3, c. 79.

These severe restrictive laws do not prohibit persons from being members of political societies, provided they are unconnected with others, and not of the descriptions mentioned: but it may be doubted whether *sending instructions* or delegates from a society already formed, to an incipient meeting or association of persons, would not be deemed a violation of the 57 G. 3; it would certainly contravene its *spirit*, but whether it violated the letter would depend on the point—whether an appointed meeting of persons, not organized, could be considered a "*society*" or "*club*" within the meaning of the act.

## II. LECTURE AND READING ROOMS.

Every house, room, or place, in which any person shall publicly lecture, or any public debate be had on any subject, or which is opened for reading books, pamphlets, newspapers, or other publications, and to which admission is obtained by the payment of money, or to which persons are admitted by tickets in lieu of money, is deemed a disorderly house, subjecting the keeper to a penalty of £100 per day, unless the house, &c., has been previously licensed by two or more justices, 39 G. 3, c. 79, ss. 18, 26. Exceptions in favour of the universities, &c. Corre-

sponding clauses in the 59 & 60 G. 3 have expired, *Tyr. Tym. Dig.* 37.

In the session of 1846 an attempt was made to procure a repeal or mitigation of the laws against political societies and lecture rooms, but unsuccessfully. All the concessions obtained by 9 & 10 V. c. 33, are that the statutes shall not be enforced at the instance of common informers or other persons. All prosecutions under them must be commenced in the name of the law officers of the crown.

### III. UNLAWFUL OATHS AND ENGAGEMENTS.

By 37 G. 3, c. 123, any person who administers, or assists, or is present in the administering of any oath or engagement intended to bind persons in any *mutinous* or *sedition* purpose, or to disturb the public peace, or to be of any society formed for such purpose; or to obey the orders of any *leader, committee, or body of men* not lawfully constituted; or not to inform against any confederate, associate, or other person; or not to *reveal any unlawful combination* or confederacy, or illegal act done or intended, or illegal oath or engagement taken or tendered, shall, on conviction, be adjudged guilty of felony, and be transported for not exceeding *seven years*. Persons taking such illegal oath, without being compelled, subject to a like punishment.

Administering any oath to bind persons to commit treason, murder, or felony, or aiding therein, is punishable with transportation for life, or fifteen years, or imprisonment for three years; and persons taking such oath without compulsion are punishable with transportation for life, or such term of years as the court shall adjudge, 52 G. 3, c. 104; 1 V. c. 91.

*Compulsion* will not excuse any person taking such unlawful oath, unless within fourteen days (if not prevented by actual force or sickness, and then within fourteen days after the hindrance ceases) he discover the same to a justice of peace, or Secretary of State, 37 G. 3, as amended by 52 G. 3, c. 104, s. 5.

In the case of the *King v. Marks*, 3 East, 157, a question was raised whether the unlawful administering of an oath by an associated body of men to a person, purporting to bind him not to reveal or discover an unlawful combination or conspiracy of persons, nor any illegal act done by them, was within the 37 G. 3; the object of the association being a conspiracy to *raise wages* and make regulations in a certain trade, and not to stir up *mutiny* or *sedition*. The oath was, "You shall be true to every journeyman shearman, and not to hurt any of them; and you shall not divulge any of their secrets—So help you God." No positive decision was come to by the judges in this case, but the impression of the judges seemed to be that the offence was within the statute.



A subsequent case occurred at the Dorchester assizes, March 17, 1834, when six agricultural labourers were convicted and sentenced to seven years' transportation for being members of an illegal society, and administering illegal oaths. The indictment charged them with administering an oath not to reveal an unlawful combination. The combination was illegal under 39 G. 3, as formed to administer unlawful oaths; and the oath not to reveal such combination illegal under 37 G. 3: so by a rather subtle application of both statutes by Mr. Justice Williams, the offenders were convicted.

#### IV. SPENCEAN OR ANTI-PROPERTY SOCIETIES.

Under the 57 G. 3, c. 19, Spencean societies or clubs, or any other description of society, by whatever name known or called, having for their object the confiscation or division of the land, or the extinction of the *funded property* of the kingdom, are prohibited as unlawful combinations and confederacies; and persons belonging to them are liable to fine or imprisonment by information, or to transportation for seven years on prosecution by indictment. The 57 G. 3, c. 19, extends only to Britain, the law on illegal societies in Ireland being the 4 G. 4, c. 87.

#### V. SEDUCTION OF THE MILITARY OR NAVAL FORCES.

The 57 G. 3, c. 7, makes perpetual the 37 G. 3, c. 70, for Britain, and 37 G. 3, c. 1, for Ireland, by which the attempt to seduce any person, serving in her majesty's land or sea forces, from his duty and allegiance, or to incite any one to commit any act of mutiny, is punishable with *death*; but the capital punishment is mitigated by 1 V. c. 91, to transportation for life, or for fifteen years, or imprisonment for three years. Whoever administers any *unlawful* oath, or takes any oath or engagement intended to bind any sailor or soldier in any mutinous or seditious society, or to obey any committee, or any person not having legal authority, is guilty of *felony*, and may be transported for seven years.

#### VI. TRAINING TO ARMS AND MILITARY EXERCISES.

The 60 G. 3, c. 1, extends to Britain and Ireland, and enacts, that meetings and assemblies of persons for the purpose of being *trained to the use of arms*, or of practising military exercises and evolutions, without the authority of the queen, a lord lieutenant, or two justices of the peace, shall subject the offenders to transportation for not exceeding seven years, or imprisonment not exceeding two years; and persons attending such meetings are liable to fine and imprisonment not exceeding two

years. Any magistrate, constable, or peace officer may disperse meetings assembled for such unlawful purposes, or detain and require bail from any one attending them.

VII. SEDITIOUS MEETINGS AND ASSEMBLIES.

Sedition is a term of frequent occurrence, but Blackstone and most popular writers on law have passed it over without defining its precise application. It seems to consist in attempts made by individuals or public meetings, by speeches or writings, to instigate to a violation of the law, to disturb established institutions, or the peace and order of society. The uttering words and political writings which intemperately or indecently criticise the public measures of the queen and her ministers, by imputing to them corrupt and improper motives, are seditious: for though temperate observations on such measures are allowable, yet the attempting to possess people with an ill opinion of the Government, and disparage it in public estimation, is considered a serious offence, whether the expedient resorted to be obloquy or ridicule.

The punishment of sedition is fine and imprisonment proportioned to the magnitude of the crime and the circumstances accompanying it.

A public meeting would be deemed *seditious and unlawful* which assembled under such circumstances of *terror*, arising either from excessive numbers, the alarming manner of assembling, or the violence of the language employed against the established authorities, as endangered the public peace, or tended to excite fears and jealousies in the people. The justices, in such cases, would be warranted in swearing in constables, and adopting the precautions to prevent disturbance prescribed by 1 & 2 W. 4, c. 41, and mentioned p. 96. The general rule of law in regard to public meetings, is, that numbers constitute force—force, terror—terror, illegality.

A meeting called “to adopt preparatory measures for holding a national convention” is an illegal meeting, *Res v. Fursev*, 6 C. & P. 81.

Some kinds of sedition may be of so aggravated a kind as to verge on treason, and come within the scope of 25 E. 3, as a *levying of war*, and an attempt by intimidation and violence to alter established institutions and remove grievances.

By 57 G. 3, c. 19, s. 23, it is unlawful to convene any meeting of exceeding *fifty* persons in any street, square, or open place in Westminster or Middlesex, within one mile from the gate of Westminster Hall (except in St. Paul's, Covent Garden, and parish meetings, in St. John's and St. Margaret's), for the purpose of petitioning the queen or either house of parliament for alterations in matters of church or state, on any day on

which parliament is sitting, or when any of the judges sit in the courts of Westminster Hall.—See *Libel*, *Conspiracy*, and *Riot*.

## CHAPTER VII.

### *Offences against Public Justice.*

OF the offences under this head, some are felonious, others are only misdemeanors. We shall begin with the minor delinquencies.

#### I. RESCUE AND ESCAPES.

Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment, and generally renders the rescuer an accomplice in the crime. Thus, a rescue in treason, is treason; in felony, is felony; and in misdemeanor, a misdemeanor. To rescue, or attempt to rescue, any person committed for murder, or on his way to execution, was punishable with death; but the punishment is mitigated, by 1 V. c. 91, to transportation for life, or fifteen years, or imprisonment for three years.

By 16 G. 2, c. 31, to convey to any prisoner in custody for treason or felony, any arms, disguise, or instrument; or in any way to assist his escape, without the knowledge of the gaoler, though no escape be attempted, subjects the offender to transportation for seven years; or, if the prisoner be in custody for an inferior offence, or charged with a debt of £100, it is then a misdemeanor, punishable with fine and imprisonment.

This act does not extend to cases where an actual escape is made, but is confined to cases of an *attempt*; and, by 4 G. 4, c. 64, the act itself is repealed, so far as it relates to gaols and houses of correction mentioned in the 4 G. 4; and, by the 43rd section of this last act, it is provided, that if any person shall be concerned in conveying into any prison any mask, vizor, or other disguise or instrument, to facilitate the escape of a prisoner, or shall any way aid an escape, whether an escape is effected or not, it is felony, and the offender may be transported for not exceeding fourteen years.

To be convicted a *second* time of an escape from the Penitentiary or from the custody of the person conveying the prisoner thither, subjects to transportation for life, or fifteen years, or to imprisonment for three years, 59 G. 3, c. 136: 1 V. c. 91.

By 52 G. 3, c. 156, persons aiding the escape of *prisoners of war* are liable to transportation.

An *escape* of a person arrested upon criminal process, by eluding the vigilance of his keepers before actual imprisonment, is punishable by fine or imprisonment. Officers, also, who after

an arrest *negligently* permit a felon to escape, are punishable by fine; but *voluntarily* suffering an escape, renders them participants in the crime for which the felon was in custody, whether treason, felony, or trespass.

*Private* individuals, who have persons lawfully in their custody, are guilty of an escape, if they suffer them illegally to depart; but they may protect themselves from liability, by delivering over their prisoner to some legal and proper officer. A private person thus guilty of an escape, incurs the punishment of fine or imprisonment, or both.

## II. GAOLERS AND OFFICERS.

In general, to oppose an officer in the exertion of any *lawful* process in criminal cases, renders the party an accomplice in the crime.

A *gaoler* is the master or governor of a prisoner, and is so far under the protection of the law, that if a person threaten him for keeping a prisoner in custody, he may be fined and imprisoned. And if, in repelling force, he commit homicide, it is justifiable; but, on the contrary, if he be killed, it is murder in the assailant.

By 3 G. 1, c. 15, it is unlawful to purchase the office of gaoler, or any other office pertaining to the high sheriff, under pain of £500.

By 4 G. 4, c. 64, gaolers permitting the sale of any spirituous or fermented liquors in prison are liable to a penalty of £20. By the 41st section of the same act, gaolers may punish certain offences in prison, as swearing, indecent behaviour during divine service, idleness at work, or wilful mismanagement of it, by solitary confinement, or keeping the prisoner on bread and water for any term not exceeding three days. They are required to attend the quarter sessions, to report the actual state of prisons, and returns are to be made to the assizes of persons sentenced to hard labour; and lists of prisoners tried for felony are to be transmitted to the Secretary of State, under penalty of £20.

By 2 & 3 V. c. 56, persons introducing, or attempting by any means to introduce, letters, tobacco, or other articles not allowed by the rules of the prison, are liable to be seized, or imprisoned one month in the house of correction, or subject to fine.—See *Gaol*, in the DICTIONARY.

## III. THEFT-BOTE,

Is when the party robbed not only knows the thief, but takes his goods again, or other amends, upon agreement not to prosecute. It is frequently called *compounding of felony*, and is punished by the common law with fine and imprisonment.

By 7 & 8 G. 4, c. 29, s. 59, if any person shall publicly advertise a reward for the return of any property *stolen or lost*, and in such advertisement use any words purporting that *no questions will be asked*, or inquiry made after the person producing such property, or promise to return to any pawnbroker money advanced on such property, he shall, as well as the printer and publisher of such advertisement, be subject to a penalty of £50, to be recovered, with full costs of suit, by any person who will sue for the same.

Nearly akin to these offences is that of taking a reward under pretence of helping the owner to his stolen goods. This was a contrivance carried on to a great extent, in the beginning of the reign of George I., by the notorious Jonathan Wild, who had under him a regularly-disciplined corps of thieves, who brought in their spoils to him; and he kept a sort of public office for restoring them to the owners at half price. To prevent which, it was made a capital offence to take any reward under pretence of helping the owner to stolen goods; and now, by 7 & 8 G. 4, c. 29, s. 58, every person who shall corruptly take any money or reward on account of helping the owner to any property stolen, taken, or converted, (unless he cause the offender to be apprehended,) shall be guilty of felony, subject to transportation for life, or not less than seven years, or imprisonment, with or without whipping, for not exceeding four years.

#### IV. RECEIVERS OF STOLEN GOODS.

Receiving stolen goods, *knowing them to be stolen*, is only a misdemeanor at common law; but later statutes make the offender accessory to the theft, and felony, or misdemeanor. By 7 & 8 G. 4, c. 29, s. 54, the receiver of any property feloniously stolen or taken, is subject to transportation for fourteen, or not less than seven years, or imprisonment, with or without whipping, for not more than three years. If the original offence amount only to *misdemeanor*, the receiver is subject only to transportation for seven years, or imprisonment for two, with or without whipping. In both these cases the receiver may be tried, whether or not the principal offender has been convicted.

The punishments for the offences enumerated in this and preceding section are commonly evaded; and by the intervention of "*fences*" and low attorneys, those guilty of receiving stolen goods, and of taking rewards for the recovery of stolen property, are with difficulty brought to justice. In the metropolis, persons suspected of having or carrying goods stolen or unlawfully obtained, and not giving a satisfactory account to the police magistrates, may be fined five pounds, or imprisoned in the house of correction for any time not exceeding two calendar months. On information on oath, that there is reasonable cause to suspect

that goods have been unlawfully obtained, and are concealed, a special warrant may be issued to enter and search any dwelling-house or other place by day or night; the parties concealing, or knowingly assisting in concealing the same, may be examined by the magistrate, who is empowered to deliver to the owner goods unlawfully pawned, sold, or exchanged, in the possession of any broker or dealer in second-hand property, with or without compensation, 2 & 3 V. c. 71, s. 24-28.

#### V. POUND BREACH.

It having been found that in many cases the expense of prosecuting persons who have been guilty of rescuing cattle lawfully impounded, or damaging the pound, has been out of proportion to the damage sustained, it is provided by 6 & 7 V. c. 30, that persons attempting to release cattle lawfully impounded, or damaging any pound, shall, upon conviction before two justices, forfeit any sum not exceeding £5, with costs; or, in default of payment, be imprisoned with hard labour for any term not exceeding three months nor less than fourteen days. The justices to proceed by summons, or may issue their warrant, and convict on the oath of one or more witnesses.

#### VI. RETURNING FROM TRANSPORTATION.

Capital punishment for this offence is repealed by 4 & 5 W. 4, c. 67, and transportation for life substituted. Previously to transportation the offender to be imprisoned, with or without hard labour, in a penitentiary or prison, for any term not exceeding four years.

By 5 G. 4, c. 84, s. 22, to rescue, or attempt to rescue, or to convey any disguise or instrument of escape to any one while in the act of being removed or transported, is felony, and subjects the offender to transportation for seven years. A reward of £20 is to be given for the discovery of any such offender at large.

#### VII. BARRETRY, MAINTENANCE, AND CHAMPERTY.

Common *barretry* is the frequent stirring up suits and quarrels among the people, and, in a common person, is punishable with fine and imprisonment; but if any one, after conviction for this offence, practise as a solicitor or agent in any suit, he may, by 12 G. 1, c. 29, be transported for seven years.

An offence of not less malignity is that of suing another in the name of a *fictitious* plaintiff, either one not in being at all, or one who is ignorant of the suit. This offence, if committed in any of the queen's superior courts, is left, as a high contempt, to be punished at their discretion. But in courts of a lower degree, where the authority of the judge is not equally exten-

sive, it is directed, by 8 Eliz. c. 2, to be punished by six months' imprisonment and treble damages.

*Maintenance* bears a near relation to *barretery*, and is an officious intermeddling in a quarrel or suit that no way belongs to one, by assisting either party with money, or otherwise, to prosecute or defend it. It is punishable with fine and imprisonment. A man may, however, maintain the suit of his near kinsman, servant, or poor neighbour, out of charity or compassion, with impunity.

*Champerty* is a species of maintenance, punishable in the same manner, and is a bargain with a plaintiff or defendant to share the land, debt, or other matter in dispute, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own cost.

Besides being criminal, contracts are void in equity when connected with the preceding class of offences. No person is permitted to assign over to another any interest or contingent profit of a *matter in dispute*, or to enter into an agreement to share it with him on consideration of the latter recovering it for him, and bearing the expenses. For such assignment to be valid, a real and adequate consideration must be given. In *Strachan v. Brander* a gift from an heir-at-law, who on the death of his ancestor was living abroad ignorant of his rights, to a person who had given him the information and offered to support him in recovering the profits, was set aside, as also was a bond for recovering £2000 in the event of his succeeding, in consideration of £1000 advanced to assist him in carrying on the suit; Lord Rosslyn observing it savoured of *champerty*.

All sales of disputed interests in real property, by a party out of possession, are void by 32 H. 8, c. 9. The statute includes leaseholds as well as copyholds.

#### VIII. COMPOUNDING OF INFORMATIONS.

Compounding informations upon penal statutes is an offence of frequent occurrence, which furnishes to the common informer a lucrative but odious occupation, and affords to the habitual offender a ready means of escape from merited punishment.

By 18 Eliz. c. 5, if any person informing, under pretence of any penal law, make any composition without leave of the court, to take any money or promise from the defendant to excuse him, he shall forfeit £10, stand two hours in the pillory, and be for ever disabled from suing on any popular or penal statute.

But this law is, in great part, ineffective for the ends of public justice; that part of it which inflicts the punishment of the pillory has been repealed; and in *King v. Crisp*, it was held not to extend to cases cognizable only by magistrates, in consequence of which informations are compounded with impunity.

The act applies, too, only to the *common informer*, and not to cases where penalty is given to the party aggrieved, 2 *Hawk.* 279.

Within the limits of the Metropolis Police District, any person compounding an information lodged for an offence by which the informer was not personally aggrieved may be fined £10. For further lessening the corrupt practices of common informers, the magistrates are empowered, in all those cases where by statute the informer is entitled to a moiety of the penalty, to adjudge that no part of such penalty, or only such part as the magistrate shall think fit, shall be adjudged to the informer, 2 & 3 V. c. 71, ss. 33, 34.

#### IX. PERJURY AND SUBORNATION.

Perjury is defined to be a wilful false swearing in any *judicial* proceeding, in a matter material to the issue or point in question, on a *lawful* oath, administered by some person of competent authority. To constitute the crime, the falsehood of the oath must be wilful, positive, and corrupt, and must not happen through haste, inadvertence, or weakness.

*Subornation of perjury* is the offence of procuring another to take such false oath as constitutes perjury in the principal.

A man may be indicted for perjury in swearing that he "*thinks*" or "*believes*" a fact to be true, which he must know to be false; but the fact must be material to the case, or no injury is done.

The 14 & 15 V. c. 100, s. 19, empowers the superior courts, county courts, commissioners of bankruptcy and insolvency, sheriffs or their deputies, to direct prosecutions for perjury, and bind persons to give evidence. Provisions are also made for simplifying indictments for perjury and like offences.

The punishment of perjury and subornation of perjury was formerly death; then forfeiture of goods; afterwards banishment or cutting out the tongue; it is now fine, imprisonment, or transportation.

A person convicted of perjury is incapable of being a witness, unless his competency be restored by pardon under the great seal, or reversal of judgment.

#### X. CONSPIRACY.

This is a term of extensive and undefined application in law. To constitute the offence there must be *confederacy*, and for a *criminal* object; the confederates need not reside in one place, but may act in different places; and provided they co-operate in one common design, it is a conspiracy: in general, any combination to injure an individual in his person, property, or character, is a conspiracy.



The offence is not confined to the prejudicing an individual; it may be to injure public trade, to affect public health, to violate the public peace, to insult public justice, or to do any act in itself illegal. A conspiracy to prevent a prosecution for a felony is an offence, 14 *Ves.* 65. So is one to raise the price of the funds, *Rex v. De Berenger*, 3 M. & S. 72. A combination of wine merchants to sell pernicious liquor; of parish officers to marry paupers; and of any person to procure the release of a prisoner by fictitious bail, is indictable as a conspiracy. It is unlawful for persons, for gain, to conspire to procure an appointment in the service of the East India Company, *Rex v. Sutton*. An agreement between private individuals to support each other in all undertakings, lawful or otherwise, is illegal.

There are many cases in which the act itself would not be cognizable by law, if done by a single person, which become the subject of indictment when effected by several with a joint design. Thus, each person attending a theatre has a right to express his disapprobation of the piece acted, or a performer on the stage; but if several *agree* to condemn a play, or hiss an actor, they will be guilty of a conspiracy, 2 *Camp.* 358. Again, a person might singly and without criminal liability refuse to pay *rates* or *taxes*, as in many cases is the practice of the Quakers; but if several were to enter into an *agreement* for that purpose, or to act in concert, they would be guilty of conspiring for an unlawful object. The same applies to a number of persons agreeing not to pay the fine, or serve in the militia, if balloted.

The punishment of conspiracy is fine and imprisonment, at the discretion of the court.

#### XI. TRADES' UNIONS AND COMBINATIONS.

Related to and often identical with the offence of *conspiracy* are confederacies among workpeople and their employers; ostensibly formed for the protection of their respective interests against each other, but frequently terminating in their reciprocal annoyance and injury. By 6 G. 4, c. 129, ss. 4, 5, both the common and statute law are repealed, which inflict punishment either on masters or workmen for meeting and entering into agreements for the sole purpose of settling the rate of wages or the hours of work. But agreements or combinations for other purposes than to regulate wages and the hours of labour may be criminal, subjecting the offenders to imprisonment and hard labour for any period not exceeding three calendar months. By the third section of the statute, the workman is protected in the free disposal of his labour against any combination of his fellow-workmen; he may make such terms and agree

to such conditions as he pleases with his employer, without regard to the rules and regulations of any trade union or society, and cannot, with impunity, be compelled to belong to any club or association, nor in any way be coerced by threat, intimidation, molesting, or obstruction. On the other hand, the employer is protected in the liberty to carry on his business or manufacture as he thinks best, and no one can lawfully interfere to dictate to him the kind of workmen he shall employ, nor whether by *piece* or *day work*, nor the number of apprentices he shall keep.

Interferences of this kind are expressly prohibited by the statute, and it is likely interference with the freedom of industry of other descriptions would be cognizable, as *conspiracy*, by the common law. No class of persons, neither men nor masters, can legally conspire to the detriment of any individual. Hence it may be doubted whether a combination of workmen not to work with another workman is *legal*; and the same doubt may be expressed as to the *lawfulness* of those defensive associations sometimes resorted to by masters, namely, when they agree among themselves not to employ any operative belonging to a trade union.

In conclusion, two points of law affecting the financial departments of 'Trades' Unions may be mentioned with advantage. First, if the union is a combination for an *unlawful* purpose, the unionists are without legal remedy, provided the treasurer or other officer purloin the funds of the society. Secondly, if the union is *lawful* in its institution, yet not being an *incorporate* body, there is no person authorized to bring an action in case of the embezzlement of the money of the society.

## XII. BRIBERY, EMBRACERY, EXTORTION.

Bribery is when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office; and though the bribe is refused, the offerer is punishable. By 11 H. 4, all judges and officers of the king, convicted of bribery, shall forfeit treble the bribe, be punished at the king's will, and be discharged from his service for ever.

To offer money to a king's minister, for the purpose of obtaining a *public employment*, is held to be a misdemeanor, 4 Burr. 2495.

Officers of the revenue taking bribes are punishable by particular statutes; so, also, is the offence of bribery at parliamentary elections.

It has been before shown that, by 5 & 6 E. 6, c. 16, the *sale of offices* in courts of justice is prohibited on pain of forfeiture and

disability; and the ecclesiastical courts are within the meaning of the act.

*Embracery* is an attempt to influence the jury in their verdict, by overawing them, or by promises, entreaties, or entertainments. The punishment of the embraceor, and of the jurors wilfully and corruptly consenting thereto, is, by 6 G. 4, c. 50, s. 61, fine and imprisonment.

*Extortion* signifies, in a large sense, any oppression under colour of right; but strictly, it is any officer taking, by colour of his office, any money or valuable, where none is due, or not so much as is due, or before it is due. The punishment is, removal from office, fine, or imprisonment.

### XIII. DESTRUCTION OF RECORDS, WILLS, AND WRITINGS.

By 7 & 8 G. 4, c. 29, s. 81, if any person steal, or for any *fraudulent purpose* take away or obliterate, injure, or destroy, any record, writ, panel, process, deposition, affidavit, rule, order, or any original document, whether belonging to any court of record, or relating to any matter civil or criminal depending in any court, he shall be liable to transportation for seven years, or such other punishment by fine and imprisonment as the court shall award.

It is a felony to acknowledge any fine, recovery, deed enrolled, statute, recognizance, bail, or judgment, in the name of another person not privy to the same. So it is to personate any other person as *bail* before any judge of assize, or other competent authority.

By 22nd section of 7 & 8 G. 4, c. 29, to steal, or for any *fraudulent purpose* conceal or destroy, any will, codicil, or other testamentary instrument relative to real or personal property, is a misdemeanor, subject to transportation for seven years, or discretionary fine and imprisonment. So is the stealing the writings or evidence relative to the title to any real estate.

By 5 G. 4, c. 20, persons in the Post Office, embezzling or destroying parliamentary proceedings, &c., sent by post, are guilty of a misdemeanor, punishable with fine and imprisonment.

The last offence against public justice we shall mention is the *negligence of public officers* entrusted with ministerial duties, as sheriffs, coroners, and constables; which makes the offender liable to be fined, and, in flagrant cases, will amount to a forfeiture of office, if a beneficial one.

## CHAPTER VIII.

*Offences against the Public Peace.*

THESE offences are either such as are an actual breach of the peace, or constructively so by tending to make others break it. Both these species of offence are either felonies or misdemeanors. The felonious breaches of the peace are strained up to that degree of criminality by several modern statutes; we shall begin with the less penal offences against the peace.

## I. CHALLENGE TO FIGHT.

To challenge to fight, either by word or letter, or be the bearer of such challenge, is an indictable offence, punishable with fine and imprisonment. It is an offence, though the provocation to fight does not succeed; and it is a misdemeanor merely to endeavour to provoke another to send a challenge, 6 *East*. 464. But mere words which, though they may produce a challenge, do not directly tend to that issue, as calling a man a *liar* or *knave*, are not necessarily criminal, though it is probable they would be so if it could be shown they were meant to provoke a challenge.

## II. AFFRAY,

From the French *effrayer*, "to frighten," signifies a fighting between two or more in some *public* place, for if the fighting be *private*, it is not an affray, but an assault. No angry or threatening words, however violent, amount to an affray: but if a person arm himself with dangerous or unusual weapons in a way to excite *terror* in the people, it is an affray. Persons present and assisting at such disorder, as a prize-fight, are guilty of an affray. (*Arnold on Public Meetings*, 14.) The punishment of common affray is by fine and imprisonment. Affrays may be suppressed by any private person present; but the constable, who is bound to keep the peace, may break open doors to suppress an affray, or apprehend the affrayers.

## III. ROUT, UNLAWFUL ASSEMBLY, RIOT.

A *route* is a disturbance of the peace by persons meeting together to commit with violence an unlawful act, without actually committing it. If any step be taken to execute the unlawful act proposed, the riotous assembly become rioters. An instance has occurred of parties being indicted for a route for having gone to the ground where a prize-fight was to take place, and for

which all preparations were made, but no blow was struck, *Wise, on Riots*, 28. The defendants pleaded guilty, and the point was not argued.

An *unlawful assembly* is any meeting of *three* or more persons under such alarming circumstances, either from large numbers, or mode of assembling, as in the opinion of rational men may endanger the peace, without being actually guilty of any aggressive act, *Reg. v. Vincent*, 9 C. & P. 91. As to the degree of alarm arising from excessive numbers, or mode of assembling essential to render a meeting unlawful, these are incidents for a jury to appreciate, duly impressed on the one hand with the importance of the maintenance of the public peace, and on the other with a proper regard for the invaluable right of good citizens publicly to meet and freely discuss any question of general interest or excitement.

A *riot* is a tumultuous disturbance of the peace by *three* persons or more assembling together without lawful authority, and jointly committing, to the terror of the people, some unlawful and violent act. Three persons are necessary to constitute a riot, as two are for an affray or a conspiracy; and, to make the unlawful assembly a riotous one, an outrage must be actually perpetrated. Women, whether married or single, are punishable as rioters, and also infants, if old enough to know that they were doing wrong. If parties meet with the intention of aiding and encouraging a prize-fight, which is clearly illegal and a breach of the peace, and if, while so intending, the fight takes place, all the parties present are liable to be indicted for a riot.

The punishment of the three preceding offences, namely, a rout, unlawful assembly, and riot, is of different degrees: by the common law discretionary fine or imprisonment, or both; and by 3 G. 4, c. 114, hard labour may be imposed in addition to, or in lieu of, other punishment.

#### IV. RIOT ACT.

The unlawful assemblies described in the last section may be of such ordinary character, as respects numbers, intention, and acts, as renders the common law adequate to their punishment; but, from the violence and excessive numbers assembling, they may assume a more formidable form, and fall within the cognizance of a statute expressly made for their repression. This leads us to speak of the Riot Act, passed in the first year of the reign of George I., for the more effectual prevention of tumultuous assemblages of people.

By this act, the 1 G. 1, c. 5, if *twelve* persons or more are unlawfully assembled, to the disturbance of the peace, and continue together *one hour* after being commanded by proclamation of one justice of peace, sheriff, or under-sheriff, to disperse,

they are guilty of capital felony. Silence must be commanded, and proclamation made with loud voice, in these, or words to the like effect :—

“ Our Sovereign Lord [Lady] the King [Queen] chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the Act made in the first year of King George I., for preventing tumults and riotous assemblies. God save the King [Queen].”

If the reading of the proclamation be by force opposed or hindered, such hinderers and opposers are felons ; and all persons to whom such proclamation may have been made, and *knowing such hindrance*, and not dispersing, are felons. But the death punishment under this statute has been mitigated, by 1 V. c. 91, to transportation for life, or fifteen years, or imprisonment for three years, at the discretion of the court.

It appears from the decision of Mr. Baron Vaughan and Mr. Justice Alderson, *Rex v. Child*, 4 C. & P. 442. that if the magistrate, in reading the proclamation, omit the words “ God save the king,” persons remaining together an hour after the reading of it cannot be convicted under the statute.

By 4 & 5 V. c. 56, amended by 6 V. c. 10, the capital punishment under 7 & 8 G. 4, c. 30, is mitigated to transportation for life, or not less than seven years, or imprisonment for not less than three years, if persons, *riotously* and *tumultuously* assembled, pull down, or *begin* to demolish any church or chapel for religious worship ; or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary ; or any building or erection used in carrying on any trade or manufacture ; or any machinery employed in any manufacture, or for sinking, draining, or working any mine ; or any staith, building, or erection used in conducting the business of any mine ; or any bridge, wagonway, or trunk.

Upon the trial of the Bristol rioters, Jan. 2, 1832, Chief Justice Tindal explained the law with great minuteness relative to riotous and tumultuous meetings, and the duties of private individuals in relation to such gatherings. He said, “ By the common law, every *private person* might lawfully endeavour, without any warrant or sanction of the magistrate, to suppress a riot by every means in his power : he might disperse those who were assembled, and prevents others who were coming up from joining the rest ; and to do this to his utmost ability was his duty as a good subject. If the riot be general and dangerous, he might *arm* himself against the evil-doers to keep the peace. Such was the opinion of all the judges in the time of Elizabeth ; though the judges add, ‘ it would be more discreet in an individual to attend and be assistant to the sheriffs, justices, and other officers.’ ”

By 13 H. 4, c. 7, two justices, with the sheriff, may come with the power of the county to arrest rioters, and every one is bound to attend them on pain of fine and imprisonment.

The duties imposed on private persons, in case of riots, are equally obligatory on soldiers, as already adverted to, p. 272.

#### V. TUMULTUOUS PETITIONING.

The offence against the public peace, by tumultuous petitioning, was carried to a great height in the times preceding the civil war, and it was to prevent the recurrence of the disturbance that the 13 Car. 2, c. 5, was passed. By this statute it is enacted, that the soliciting or procuring the names of above *twenty* persons to any petition to the king, or either house of parliament, for any alteration in church or state, unless the contents thereof be approved by three justices of the peace of the county, or the majority of the grand jury, either of the assize or quarter sessions; or, in London, by the lord mayor, aldermen, and common council; or presenting any petition to the king or parliament, accompanied by more than *ten* persons, incurs, in either case, a penalty of £100 and three months' imprisonment.

It is only under this statute that the corporation of London, since the Restoration, have usually taken the lead in petitions to parliament for the alteration of any established law or grievance; but it seems not to warrant a petition from the Common Hall.

On the trial of Lord George Gordon, it was contended that the article in the Bill of Rights, which declares that it is the right of the subject to petition, had, virtually, repealed the act of Charles II. This, however, was denied by Lord Mansfield, *Douglas*, 571; but the better opinion appears to be that the people have a right, at least, to petition their representatives in parliament, and that the act of Charles, limiting the number of names, is abrogated by the Bill of Rights; and the acknowledged practice is consistent with this opinion.

#### VI. APPEARING OR GOING ARMED.

When the wearing of swords was fashionable, and arms were part of a gentleman's personal equipment, any unusual or dangerous weapons were prohibited; as arms not suited to the person's quality, or the showing of force at unsuitable times, caused terror, or were incentives to breaches of the peace. The 13 E. 1 (*statuta civitatis London.*), and the 2 E. 3, c. 2, expressly prohibit the *riding* or *going armed*, upon pain of forfeiture of the arms and imprisonment. The law allows every Englishman to use arms to defend himself against *violence*, to suppress rioters,

or that he may defend his dwelling-house against a felonious attack ; but a person would not be justified in the use of fire-arms, or other deadly weapon, to resist the perpetration of a misdemeanor : and the preparing or collecting arms for the purpose of violating the law or resisting lawful authority, is clearly illegal.—(Attorney-General, Chester, Aug. 14, 1839.) The frequenting public meetings *armed* is indictable ; a justice may hold a party to bail for so doing. The Bill of Rights does not repeal, but confirms the old statutes, by enacting that Protestants may have arms suited to their condition, and as *allowed by law*.

A person appearing armed with a gun, or other offensive weapon, with intent to commit a felonious act, is punishable, under the Vagrant Act, as a rogue and vagabond.

Training to military exercises, without the sanction of public authority, is expressly prohibited, as already mentioned in chapter on *Unlawful Oaths*, &c., p. 473.

#### VII. FALSE NEWS AND PROPHECIES.

Spreading false news to make discord between the queen and nobility, or concerning any great man of the realm, is punishable, by several statutes, with fine and imprisonment. So, by the 5 Eliz. c. 15, if any person publish any false or pretended prophecies, with intent to excite disturbance, he shall, for the *first* offence, forfeit £10 with one year's imprisonment ; and, for the *second*, forfeit his goods and chattels, and be imprisoned during life.

#### VIII. EXTORTION BY THREATS.

By 7 & 8 G. 4, c. 29, amended by 1 V. c. 87, and 10 & 11 V. c. 66, if any person *knowingly send or deliver* any letter or writing, demanding, with menaces, without reasonable cause, any money or valuable, or accuse, or threaten to accuse, or send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable with death, transportation, or pillory, or of any assault with intent to commit a rape or *unnatural crime* ; or if any person, with a view to extort money or other valuables, send any letter or writing, threatening to *murder* any person, or to burn or destroy any house, building, rick, stack, or agricultural produce : every such offender is guilty of felony and liable to transportation for life, or not less than seven years, or to imprisonment, with or without hard labour, for not less than four years ; and if a male, if the court think fit, to be once, twice, or thrice publicly or privately whipped.

Persons accusing others, or threatening to accuse others, of the crimes referred to, are guilty of felony, subject to like punishments.



## CHAPTER IX.

*Offences against Commerce and Trade.*

THE commercial code of the country has undergone material alterations in late sessions of parliament, and many regulations, founded on mistaken notions of the public interest, and which interfered with the general principle of commercial freedom, have been repealed. One of the most notable of these reforms was the repeal in 1854, by the 17 & 18 V. c. 90, of all acts passed in England, Ireland, or Scotland, in number twenty, and extending, in England, from 37 Hen. 8, c. 9, to 13 & 14 V. c. 56, pertaining to usury, or the offence of exacting a higher rate of interest for money lent than that the law prescribed. By this repeal the moneyed man is left to the same unrestricted freedom in the employment of his capital which the landlord exercises in the disposal of his land, or the mechanic and labourer in the disposal of their industry. The chief remaining offences affecting commerce are the following :—

## I. SMUGGLING.

This offence consists in the clandestine importing or exporting prohibited goods, or goods without paying the duties imposed thereon by the laws of the customs and excise.

By 8 & 9 V. c. 87, if any persons, to the number of three or more, armed with fire-arms or other aggressive weapons, within the United Kingdom, be assembled in order to the *aiding and assisting* in the illegal landing, running, or carrying any prohibited goods, or goods on which the duties have not been paid or secured; or in rescuing any person apprehended for these offences: every person so offending is liable to transportation for life, or not less than fifteen years, or to imprisonment for not exceeding three years.

The same punishment is awarded to any person who maliciously shoots at any vessel in her majesty's navy, or in the revenue service, or at any officer while in the due execution of his duty: aiders and abettors are comprehended. Resisting any officer in the execution of his duty subjects the offender to transportation for seven years, or imprisonment and hard labour in the house of correction for not exceeding three years.

Persons who knowingly harbour, keep, or conceal smuggled goods, or knowingly suffer or permit it to be so done, to forfeit treble the value, or pay the penalty of £100. Persons offering goods for sale under the pretext that they are prohibited, or

have not paid duty, are subject to the same forfeiture or penalty.

*Searching the Person.*—Officers may search, for smuggled goods, any person on board a vessel within the limits of any port of the United Kingdom, or after they have landed, and if obstructed in the execution of their duty, the penalty is £100. But *before* a person is searched, he may require the officer to take him before a justice, or superior officer of the customs, who shall determine whether there be reasonable ground to suppose that such person has in his possession any uncustomed or prohibited goods. Officer misconducting himself in such personal search is subject to a £10' penalty.

## II. CHEATING.

By this is meant any fraudulent practices, by which a person is defrauded of his rights; as by false weights and measures, the selling of goods with counterfeit marks, playing with false dice, or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written: all which offences are punishable with fine and imprisonment.

To constitute cheating, a merely *false representation* is not sufficient. That falls under the head of the next-mentioned offence. In cheating there must be a plausible contrivance, as by false weights and measures, against which the ordinary prudence of individuals is no security. So that selling by *false weights* is an indictable offence, though selling *under measure* is ground only for civil action. The selling of bad wine, pretending it to be good, has been holden indictable, 2 *Raym.* 1179; but Lord Ellenborough suggested that this was a case of conspiracy, or is to be supposed only on the ground that the wine sold was unwholesome to man.

Cheating at a race is indictable.

Under the head of cheating may be included *false personation*; which consists in the offender falsely representing himself, or assuming to be, any other person, whether such other person be alive or dead, or whether or not such other person ever existed; the object of the offender being the fraudulent obtaining of another's property.

False personation, to receive the wages, pay, half-pay, prize-money, bounty-money, pension, or gratuity, in the army or navy; or falsely personating the owner of any share or interest in any stock, annuity, or other public fund, transferable at the Bank of England, or South Sea House, are crimes punishable with transportation for life, or shorter period, or imprisonment.

By 6 V. c. 18, s. 83, personating a voter at a parliamentary election is punishable with imprisonment and hard labour for

not exceeding three years; aiding therein subjects to the same punishment.

### III. FALSE PRETENCES.

This is another and common species of fraud. In order to constitute a false pretence, there must be a fraudulent representation as to the existence or non-existence of some specific fact, by which, wholly or in part, property is obtained. If a man purchasing goods, promises to call and pay for them the next day, this is a mere prospective engagement, but no misrepresentation as to any specific fact; but if he be intrusted with goods, on giving his promissory note in payment, falsely representing that the banker to whom such note is directed has a sufficient balance of the maker's in hand, the crime is complete. In one case, where a party, to induce his banker to honour his cheques, drew a bill on a person on whom he had no right to draw, and which had no chance of being paid, in consequence of which the banker paid his cheques, it was adjudged not to be a false pretence, because he only obtained *credit*; it would have been otherwise had he obtained *money* upon the bill.

By the Mutiny Act, an *apprentice* enlisting in the army, and when brought before a magistrate to be attested, concealing his apprenticeship, may be indicted for obtaining the bounty-money under a false pretence.

A minor going about pretending he is of age, and obtaining money or goods, may be punished as a common cheat.

The punishment for obtaining any money, chattel, or security, by any false pretence, with intent to cheat or defraud, is transportation for seven years, or imprisonment with or without hard labour or solitary confinement, 7 & 8 G. 4, c. 29, s. 53; 7 W. 4, and 1 V. c. 90, s. 5.

Under the first of these statutes, where there is an intent to defraud, coupled with an intent to steal, and the offender receive the goods, he may be convicted of theft, though legally entitled to his acquittal for the false pretence. This provision was made to avert an entire failure of justice from the nice legal distinctions between theft and fraud.

### IV. EMBEZZLEMENT.

This is a kindred offence to the two preceding. It consists in the wrongful appropriation by the offender, of money or goods with which he is entrusted for another's use. This is not cheating, because there is no fraudulent contrivance; nor is any false pretence used; neither is it theft, since no property is taken, the offender being previously in lawful possession.

Embezzlement is chiefly committed by agents, clerks, or servants, having the management of the business of others, and

the offence is aggravated by a breach of confidence being coupled with the criminal application of the property of their employer.

The range of punishment for embezzlement is very wide, extending from fine and imprisonment to transportation for life or lesser term, according to the heinousness of the offence.

The capital punishment under 15 G. 2, c. 2, is mitigated to transportation for life, or not less than seven years, or imprisonment for not less than three years, if any officer or servant of the *Bank of England* or *South Sea Company* secrete, embezzle, or abscond with any note, bill, bond, dividend, warrant, money, security, or effects, entrusted to him as an officer or servant of the company.

By 1 V. c. 36, s. 26, every person employed under the Post Office who shall steal, embezzle, secrete, or destroy a post-letter, shall either be transported for seven years, or be imprisoned for not exceeding three; and if any such post-letter shall contain any chattel or money, or valuable security, shall be transported for life. Stealing, secreting, or delaying printed votes, or proceedings in parliament, or a newspaper, subjects to fine and imprisonment.

Persons employed in the *public service* of her majesty embezzling the property with which they are entrusted, are liable to transportation for fourteen, or not less than seven years, or imprisonment for three years, with or without hard labour or solitary confinement, 2 W. 4, c. 4.

If a *clerk* or *servant*, or any person employed in that capacity, in virtue of such employment receive or take into his possession any chattel, money, or valuable security, on account of his master, and *fraudulently* embezzle it, or any part thereof, he shall be deemed to have feloniously stolen the same, and is liable to the punishment last mentioned, 7 & 8 G. 4, c. 29; 1 V. c. 90.

If any money, or security for the payment of money, be entrusted to any *banker, merchant, broker, attorney, or other agent*, with any direction *in writing* to apply such money, or part thereof, or the proceeds, for any purpose specified in such direction, and he convert the same to his own use, or any part thereof, every such offender is liable to be transported for any term not exceeding fourteen years, nor less than seven years, or to fine or imprisonment, with or without hard labour, or solitary confinement, 7 & 8 G. 4; 1 V. c. 90.

The same punishment is enacted if any banker, &c., sell, negotiate, transfer, pledge, or in any manner convert to his own use, any chattel, valuable security, or power of attorney for the transfer of stock, entrusted to him for safe custody, or other *special purpose*.

But this does not affect trustees nor mortgagees; nor banker, merchant, or other agent receiving money due on securities, or disposing of securities on which they have a lien.

## V. MONOPOLY.

By 21 Jac. 1, c. 3, all monopolies, grants, letters patent, and licence, for the sole buying, selling, and making of goods and manufactures, are declared void, except PATENTS for fourteen years for the sole working or making of any new manufacture which is not mischievous to the State or generally inconvenient. Grants by act of parliament to any corporation, company, or society, for the enlargement of trade; and letters patent concerning any printing, making gunpowder, ordnance, &c., are excepted.

## VI. FORESTALLING, ENGROSSING, AND REGRATING.

*Forestalling* is the buying or contracting for any cattle, provision, or merchandise on its way to the market, or dissuading persons from buying their goods there, or persuading them to raise the price; *regrating*, is the buying corn, or other commodity, in any market, and selling it again in the same market, or within four miles; *engrossing* is the buying up large quantities of corn, or other commodity, with intent to sell it again, which it was thought might be injurious to the public, by putting it in the power of two or three great capitalists to raise the price of provisions at their own discretion. Even spreading rumours of the scarcity of an article, with the view of enhancing the price, was held an indictable offence, *Rex v. Waddington*, 1 E. R. 143. But in the session of 1844 these offences were abolished, and by 7 & 8 V. c. 24, the whole or part of thirty-six acts passed in restraint of the freedom of trade or labour, from the reign of Richard II. to George III., are repealed.

## CHAPTER X.

*Nuisances and Offences against Public Health.*

## I. COMMON NUISANCES.

THE nature of private nuisances and the legal modes of individual reparation have been described under the head of Civil Injuries. Common nuisances are annoyances of a more general and heinous character, and are offences against the public, either by doing a thing which tends to the detriment of the community, or by neglecting to do anything which the common good requires.

Injurious and offensive trades and manufactures, which, when

hurtful to individuals, are actionable, are, when detrimental to the public health or convenience, punishable by public prosecution, and subject to fine according to the magnitude of the offence.

Keeping of hogs in a city or market town is indictable as a common nuisance; and from the offensive effluvia from tallow-melters, they would, doubtless, fall under the same denomination. But it is essential in this case that they should be kept in such inconvenient parts of the town or city, that they must unavoidably annoy the neighbourhood, and impair the enjoyment of life or property.

Disorderly inns or ale-houses, unlicensed stage-plays, booths, or stages for rope-dancers, mountebanks, and the like, are public nuisances, which may be indicted and fined, 1 *Hawk.* 198. The making and selling of *fireworks* and *squibs*, or throwing them about in any street, is a nuisance, punishable by fine: for the making and selling, £5; and for the throwing or firing, 20s., 9 & 10 W. 3, c. 7.

By 12 G. 3, c. 61, no one is to keep more than 200 lbs. of *gunpowder*, nor any person, not a dealer, more than 50 lbs. in the cities of London or Westminster, nor within three miles thereof; nor within any other city, borough, or market-town, within one mile thereof; nor within two miles of the royal palaces or magazines, or half a mile of any parish church, on pain of forfeiture and two shillings a pound (except in licensed mills).

*Smoke Nuisance in London.*—By 16 & 17 V. c. 128, every furnace employed in the metropolis in the working of engines by steam, and every furnace employed in any mill, factory, printing-house, dye-house, iron-foundry, glass-house, distillery, brewhouse, sugar refinery, bakehouse, gas-works, water-works, or other building, used for the purpose of trade or manufacture (although a steam-engine be not used), shall be so constructed or altered as to “consume or burn the smoke” arising from such furnaces. Penalty on owner, or foreman, or other person employed by owner, not exceeding £5 or less than 40s.; on a second conviction, £10. Persons carrying on any *trade or business* which occasions noxious effluvia, or otherwise annoys the neighbourhood, without using the best means for preventing such smoke or annoyance, seem liable (s. 1).

Steam-vessels above London Bridge are required to consume or burn their smoke, under like penalties.

S. 3 explains that the words, to “consume or burn the smoke” are not intended to mean to “consume or burn *all* the smoke,” but as much as in the opinion of magistrates shall be deemed practicable or possible. Constables may be empowered to enter and inspect furnaces and steam-engines. No information to be laid except by authority of Secretary of State, or commissioner

of police, nor by secretary or commissioner, unless local authorities fail to proceed.

The exemption of glass and pottery works from the act is repealed by 19 & 20 V. c. 107, and they become liable after Jan. 1, 1858. All steam-vessels plying between London Bridge to the westward of the Nore Light, are made subject to the same provisions as steamers above London Bridge. Furnaces of public baths and washhouses included under 19 V. c. 128, by 20 V. c. 107.

*Dog Nuisance.*—To suffer any *mischievous dog* to go loose or unmuzzled, to the danger and annoyance of the neighbours and passengers, is an indictable offence, and an action for damages will also lie against the owner. But an action cannot be brought against the owner of a dog for biting a person, unless the owner had notice of his having bit somebody at least once before. An action will also lie against a man keeping a dog accustomed to bite sheep.

In general, it seems that the owner of any *vicious animal*, after notice of its having done an injury, is bound to secure it at all events, and is liable for damages to a party subsequently injured, if the mode he has adopted to secure it proves to be insufficient. Thus, in an action for injury by a vicious bull, the plaintiff recovered, though it appeared the bull was attracted by the cow in a particular state, which the plaintiff was driving past the field where the bull was, and that the plaintiff first struck the bull to drive him away from the cow, *Blackman v. Simmons*, 3 C. & P. 138. Again, in the Court of Queen's Bench (June 2, 1846), the judges refused to disturb a verdict obtained for damages given against the owner of a vicious monkey that had bitten the plaintiff.

By 2 & 3 V. c. 47, the metropolitan police are authorized to destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any animal suspected to be rabid; and the owner of such dog or animal who permits the same to be at large after having information or reasonable ground to believe it to be rabid, or to have been bitten by a rabid animal, is liable to a penalty of £5.

Making great noises in the streets, in the night, by trumpets or otherwise, is a nuisance. Blowing a horn or using any other noisy instrument in the streets of the metropolis, for the purpose of selling or distributing any article, or obtaining money, subjects to a penalty. Any unauthorized obstruction of the highway, as by causing a crowd, is an indictable offence, *Rex v. Curdile*, December 1, 1884.

*Eaves-droppers*, or such as listen under walls and windows, and the eaves of houses, and thereupon frame mischievous tales, are punishable by fine, and finding sureties for good behaviour. So a common scold is a public nuisance to the neighbourhood;

for which offence she may be indicted, and, if convicted, may be plunged into the water in an ancient engine for that purpose called a ducking-stool.

*Disorderly Houses.*—Keeping a common gaming-house is a nuisance, and the keeper may be indicted; and by 58 G. 3, c. 70, persons appearing or acting as masters are to be considered as keepers, and liable accordingly. The 33 H. 8, c. 9, prohibits the keeping any gaming-house for profit, under a penalty of 40s. a day; merely playing at an inn, where the owner derives no benefit from it, is not within the act, *Dalt.* c. 46. But by 3 G. 4, c. 114, the keeping a common gaming-house, a common bawdy-house, or a common ill-governed and disorderly house, subjects to imprisonment and hard labour, in addition to, or in lieu of, any other punishment; and by 2 & 3 V. c. 47, any reputed common gaming-house in the metropolis may be forcibly entered by the police, and all present taken into custody.

For facilitating the prosecution and suppression of a common bawdy-house, the 25 G. 2, c. 36, provides, that if two inhabitants of any parish, paying scot and lot, give notice in writing to the constable, of any person keeping a bawdy-house, the constable shall go with them to a justice, and upon their making oath that they believe the notice to be true, and entering into a recognizance in £20 each to produce evidence, the constable shall enter into recognizance in the sum of £30 to prosecute the same with effect at the next sessions or assizes. Provision is made for the payment of the constable's expenses in the prosecution, and also of £10 to each of the inhabitants, by the overseer of the parish. The party accused may be then bound over to appear, and the magistrate may also take security for their good behaviour in the meantime.

## II. BOARD OF HEALTH AND REMOVAL OF NUISANCES.

In 1854 the General Board of Health was reconstituted under the 17 & 18 V. c. 95, and composed of a president, appointed by the crown, with a salary, of the two Secretaries of State, the president and vice-president of the Board of Trade. By 18 & 19 V. c. 115, the Board of Health is empowered, with consent of the Treasury, to appoint a medical council and medical officer, with salaries.

Under 18 & 19 V. c. 116, the board, for the better prevention of diseases, may issue regulations for the speedy interment of the dead, for house-to-house visitation, for the dispensing of medicines, and for affording medical aid and accommodation. Whenever any part of England is affected by dangerous disease, the Privy Council may issue orders that the regulations for the prevention of diseases be enforced. Local authorities are to enforce the preventive regulations and institute proceedings for the violation of them.



By 18 & 19 V. c. 121, preceding acts on the Removal of Nuisances are amended and consolidated. By s. 3 the Local Board of Health, if one has been established, is the local authority, or if none, the authority is vested in the following:—1. The corporation. 2. The commissioners under an improvement act. 3. The trustees or commissioners of highways. 4. A committee to be chosen by vestry, not more than twelve in number, and of which the surveyors of highways shall be members *ex officio*. 5. The board of inspectors for lighting or watching. 6. The guardians and overseers of the poor, with the surveyors of highways. In the city of London the local authority is to be the commissioners of sewers, and in Oxford and Cambridge the commissioners for local improvements. In cases of vacancy in any of the preceding boards, the vestry is to fill up the vacancy by election, but the remaining members are empowered to act; and any of such boards may appoint a committee from their own body to carry this act into effect, of whom two shall be a quorum.

By s. 9 the local authority is empowered to appoint a sanitary inspector, with a salary. Notice of nuisance may be given by any person aggrieved, or by two or more householders, or by any of the public officials of the district. The local authority has power to enter any premises where they have grounds for believing the existence of a nuisance, at any hour between 9 A.M. and 6 P.M., to examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this act; and to remove or abate a nuisance in case of non-compliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of this act, for which they may enter premises, without notice, at any hour during which business is carried on. Having ascertained the existence of a nuisance, the local authority are to summon the offending party before any two justices of the peace, who, on satisfactory proof of the nuisance, shall issue an order for its abatement, and for the payment of all costs up to the time of making the order; and such justices may require the person on whom the order is made, either occupier or owner, to provide sufficient privy accommodation, means of drainage or ventilation, or to pave, cleanse, or whitewash premises, or to fill up, drain, cleanse, or remove any cesspool, ditch, privy, urinal, ashpit, &c., which may be a nuisance or injurious to health; and also to make a prohibitive order against any future nuisance. By s. 14 a penalty of 10s. per day is inflicted for default in executing the orders, and of 20s. for wilfully acting contrary to such orders, and the local authority is empowered to enter and remove or abate any nuisance so condemned or prohibited, charging the cost upon the

offender ; who, however, has the right of appeal against the prohibitive order, as well as against any order in which structural works are required. Where owners or occupiers cannot be ascertained, the order for the removal of a nuisance is to be addressed at once to the local authority, who are to defray the cost in the first instance out of the funds provided by the act.

By s. 21 surveyors of highways are to cleanse and keep open ditches, drains, and watercourses adjoining any highway, but the local authority may cover and improve open ditches wherever used as sewers. A penalty of £200 is imposed for suffering gas-washings to flow into any stream, aqueduct, or reservoir for water, such penalty to be sued for within six months of the offence ; and an additional penalty of £20 per day is imposed for a continuance of the offence after notice has been given.

By s. 26, the sanitary inspector, who is to examine all sorts of food, may order its destruction if found unfit for use, and the person to whom it belonged, or in whose possession it was found, is liable to a penalty not exceeding £10. As to nuisances arising in cases of noxious trades or businesses, such as fallow-melting, soap-making, slaughter-houses, &c., if two legally-qualified medical practitioners certify that it is a nuisance or injurious to health, the local authority is to bring the case before two justices in session, and if the nuisance appear to them to be established, and that the person carrying on the business has not used the best practicable means for counteracting such nuisance, they shall inflict a summary penalty of not more than £5, nor less than 40s.; for a second offence a penalty of £10; and for each succeeding offence the double of the last penalty, but so that the highest amount do not exceed £200 : an appeal, however, is allowed to a superior court. If the medical officers of health, or, if none, two medical practitioners, certify that any house, the inhabitants of which consist of more than one family, is *overcrowded*, the local authority is to take proceedings before the justices to abate such overcrowding, and the justices may inflict a penalty not exceeding 40s. on the occupiers of such house.

By the 19 & 20 V. c. 85, the General Board of Health is continued.

### III. PREVENTION OF DISEASES.

By *infectious* disease is generally understood one that is communicated to others through the medium of the atmosphere ; by *contagious* disease, one that infects by the touch or actual contact of individuals ; by *endemic* disease is meant one that is not general but peculiar to a particular country, place, or locality ; and by *epidemic* disease one that is not local, or peculiar to any individuals or class, but general alike to all, like a plague or pestilence. Repeated visitations of late years of disor-

lers assumed by many to be of a local character have been productive of statutes for eradicating the causes of such maladies, or limiting their range and frequency by the creation of boards of health, the compulsory removal of nuisances, and the other precautionary expedients stated in the previous section.

By 3 & 4 V. c. 29, the guardians or overseers of every parish or union are directed to contract with medical practitioners for vaccination, and the amount of remuneration to be proportioned to the number of persons successfully vaccinated. Wilfully attempting to produce the small-pox by inoculation with variolous matter, or by the wilful exposure to variolous matter, may be summarily punished by imprisonment for any period not exceeding a month.

For extending the practice of *vaccination*, the 16 & 17 V. c. 100, provides that every parish or union in England and Wales shall be divided into districts by the guardians or overseers, and places appointed for vaccination: due notice being given of days and hours when the medical officer will attend. Parents of children required to have their children vaccinated within *three calendar months* after birth, or in case of death, illness, or other inability of parents, those having the care of the children required to have them vaccinated within four calendar months after birth, unless in either case previously vaccinated by some duly-qualified medical practitioner, and the vaccination certified. Children to be taken for inspection by the medical officer, within *eight days* after the operation, and certificate of successful vaccination to be delivered. If children be not in a proper state for vaccination, the medical officer to give a certificate to that effect to be in force for two months, s. 5. Registrar of births and deaths in the subdistrict to give notice to parents or guardians within seven days after the registration of the birth of any child, of the requirements of vaccination under this act; if such notice is neglected, penalty 40s. Fee of 3*d.* payable to the Registrar for each vaccination. Penalties recoverable before any two justices of the county, city, or borough.

In a prosecution instituted for conveying a child infected with the small-pox along the public highway, Mr. Justice Le Blanc said, "that there could be no doubt in point of law, that if a person unlawfully, injuriously, and with full knowledge of the fact, exposed in a public highway a person infected with a contagious disorder, it was a common nuisance to all the subjects, and indictable as such. No person having a disorder of this description upon him ought to be publicly exposed, to the endangering the health and lives of the rest of the community," *Rex v. Vantandillo*, 4 M. & S. 7.

IV. NUISANCES IN THE METROPOLIS.

By act 57 G. 3, c. 29, nuisances from throwing ashes, dust, dirt, rubbish, or any other *filth whatever*, in streets, is prohibited, on penalty of not less than 40s., nor more than £5, for each offence, s. 64. The like penalty is inflicted for annoyances from showboards, baskets, stalls, wares, and *other matters*; and in case of any renewal of the nuisance after notice, all such articles may be seized and sold, s. 65. Hlog-styes, slaughter-houses, and *any other matter*, which in the judgment of the commissioners is a nuisance to the other inhabitants, are, on complaint of any inhabitant, and due investigation, to be removed after seven days' notice, under a penalty of £10 for every neglect; and the party may be indicted, and the nuisance abated, as in the case of public or common nuisances, s. 67. No *swine* to be kept, or suffered to wander in the streets, ss. 68, 69. Certain *offensive* slops are to be removed in covered carts, on pain of £5, s. 73.

The 2 & 3 V. c. 47, subjects to a penalty not exceeding 40s. every person who, in any thoroughfare within the metropolitan district, shall burn, dress, or cleanse any cask or tub; screen any lime; throw or lay rubbish; beat carpet, rug, or mat (except door-mats, before eight in the morning); empty privy (except between twelve at night and six in the morning); keep a pig-sty in the front of any street or road in a town; not sweep footways and watercourses adjoining premises; expose articles for sale in any public garden or park without owner's consent; or leave open any vault or cellar; or not sufficiently fence any area, pit, or sewer.

In the metropolis, by 7 & 8 V. c. 14, buildings are prohibited to be erected nearer than 50 feet to manufactories dangerous in respect of fire or explosion, in consequence of the manufacture of gunpowder, ignitable matches, vitriol, fireworks, turpentine, naphtha, &c. The erecting of dwellings near to, or the carrying on certain offensive or noxious businesses, as blood-boiler, bone-boiler, soap-boiler, tallow-melter, fell-monger, slaughterer of cattle, and tripe-boiler, are also placed under restriction.

By 2 & 3 V. c. 71, the magistrates within the metropolitan police district may, on the complaint of the guardians or overseers of the poor, order any house or part thereof represented to be in a filthy and unwholesome condition to be cleansed at the expense of the owner, if he neglect to do so within seven days.

For discouraging and prohibiting the use of buildings in the metropolis unfit for dwellings, the 7 & 8 V. c. 84, prohibited, after July 1, 1846, the occupation of any underground room or cellar, except as a wareroom or storeroom, under a penalty of 20s. per day, payable by the person who lets the same, unless constructed as directed by the act.

The laws relating to the sewers of the metropolis were consolidated by the 11 & 12 V. c. 112, and the act amended by 12 & 13 V. c. 93.

#### V. METROPOLITAN BURIALS AND CEMETERIES.

The act of 1852, the 15 & 16 V. c. 85, relative to these subjects, comprehends in its local limits the cities of London and Westminster, the borough of Southwark, with the parishes of Woolwich, Greenwich, Hammersmith, Fulham, Putney, and other specified suburban parishes and townships; forming the burial district of the metropolis. By s. 1 the act of 1850 is repealed; but continues the paid additional member of the General Board of Health. On the representation of a Secretary of State, an order in council may direct burials in any part of the metropolis; but the order is not to extend to the burial-grounds of Jews or Quakers, nor to non-parochial grounds of private persons, unless expressly mentioned; and the right of burying in vaults is saved. Any person assisting in any way at the burial of any dead body in a ground declared closed by order in council is punishable for a misdemeanor, and where the parish burial ground has been closed, the body of a parishioner shall not be buried in any other burial ground in the metropolis, except where some relative has been buried, and at the express wish of some surviving relatives. The provisions of the act not to extend to the Kensal Green Cemetery, the South Metropolitan Cemetery, the cemeteries of the London Cemetery Company, of the West of London and Westminster Company, the Victoria Park Cemetery, the Abney Park Cemetery, and the cemetery for the parishes of St. Dunstan, Stepney, and St. Leonard, Bromley. By s. 9, no new burial ground is to be used in the metropolis or within two miles of any part thereof, without the previous approval of a Secretary of State. On the requisition of ten or more ratepayers, the churchwardens of any parish may convene a vestry meeting, which may determine whether a burial ground shall be provided for the parish; and if the meeting decide in the affirmative, the vestry is to appoint a "burial board," and proper officers, and the board will have power to purchase and lay out ground, and to borrow money with approval of the Treasury. The Public Works Loan Commissioners are authorised to advance money for the purposes of the act; the money raised, and the income arising from the burial ground, except the fees payable to the incumbent, sexton, &c., to be applied towards defraying the expenses. Several vestries may combine to purchase a burial ground for the common use of the respective parishes, and the burial boards are to be corporate bodies. By ss. 25-39, every burial board is to provide with all convenient despatch a burial ground for

the parish or parishes for which it acts, which may be within or without the limits of such parishes, but to have regard to the convenience of access from them, but no ground, not already appropriated as a burial ground, to be used as such under this act nearer than two hundred yards to a dwelling-house, without the consent of the owner and occupier; but the board may purchase lands for its purposes from a cemetery company, and may sell any part of the lands not required; or with the consent of the vestry appropriate lands belonging to the parish, under such conditions as the Court of Chancery may direct. The burial board is to lay out the burial ground in a fitting manner, a part to remain unconsecrated, and is to provide chapels for the performance of the funeral service of the Church of England, and for Dissenters; the board may contract for works to be done; the burial ground is to be that of the parishes for which it has been provided, and all rights are to apply to it which pertained to the previous burial grounds of such parishes; the board also may sell exclusive rights to burial vaults, and the liberty to erect monuments; and may fix a scale of fees for interments. Where fees are now applicable to stipends of ministers or other parochial purposes, they are to continue to be applied to that purpose, but the vestry is to have power, with consent of the bishop, to revise fees to incumbent, and to substitute a fixed payment. The general management is to be vested in the burial boards. Arrangements to be made between incumbents, to be confirmed by the bishop, for the employment and payment of a chaplain to perform the duties for united parishes. By s. 41 the burial board is empowered to make arrangements for facilitating the conveyance of bodies to the burial ground, and to provide places for the reception of bodies until interment. The commissioners of sewers for the city of London, after being authorised by the common council, are to act as a burial board for the city and liberties thereof. The Secretary of State is empowered to make such regulations for the burial grounds, and for places for the reception of dead bodies previous to interment, as may seem proper. The Treasury is authorised to advance money for the purchase of the Brompton Cemetery, and after the purchase is completed, the West of London and Westminster Cemetery Company is to be wound up. The Brompton Cemetery may be sold by the Treasury, and until it is sold may be used for interments. By s. 49, the compensation fee to incumbents on the burial of a pauper is limited to 2s. 6d., but where the burial fees are payable to churchwardens, the incumbents are not to be entitled, but they are to continue payable as before. Incumbent or churchwardens are empowered by s. 51 to convey any chapel used in a burial ground in which interments are discontinued, on such trusts as may be approved of by the vestry.

By 16 & 17 V. c. 134, the above act is amended, and further provisions made relative to burials in England beyond the limits of that act. By s. 1, on representation of a Secretary of State, an order in council may, for the protection of the public health, restrain the opening of new burial grounds in any city or town, or within other limits; or may order, wholly or partly, the discontinuance of burials in places specified in such order. Order not to extend to the burial grounds of Quakers or Jews, unless expressly included, s. 2. Rights to bury in vaults, &c., saved by s. 4. Act not to extend to cemeteries established by act of parliament, or new burial grounds approved by Secretary of State. Certain provisions of former act, from s. 10 to s. 42, both inclusive, made applicable to any parish not within the metropolis. By s. 7, any burial board erecting a chapel for burials according to the rites of the Church of England, required also to erect a chapel for persons not being members of that church.

In some parishes, partly or wholly within boroughs, it has been found difficult to find the requisite places of interment for the inhabitants, under the last-mentioned act. Consequently, under 17 & 18 V. c. 87, upon the petition of the borough council, the crown, by order, may invest such council with the power of providing burial grounds. Upon such order, borough council to have all the powers vested in burial boards, under 16 & 17 V. c. 134. Expenses to be paid out of borough funds or rates. Moneys may be borrowed at a lower rate of interest to pay off securities bearing a higher rate. Council may fix a higher rate of payment for interment in the outlying part of any parish, partly situate within the borough. Order of crown may except parishes already having burial grounds; and in such cases, if a rate be necessary, a separate rate to be made on the rest of the borough. Powers of vestry, with consent of bishop, of fixing and revising the fees payable to incumbents, clerk, and sexton, are transferred to the borough council, s. 10. Council may appropriate land belonging to the borough. Burial ground not to be within 100 yards of a dwelling-house.

#### VI. QUARANTINE REGULATIONS.

A regulation of doubtful efficacy has long been relied upon for the preservation of the public health, and for preventing the communication of diseases from abroad, namely, the performance of *quarantine*; that is, not allowing either the persons or goods on board any vessel coming from places where any dangerous, contagious, or infectious disease prevails, to land at their destination till forty days, or other determinate period, has expired. By the 6 G. 4, c. 78, places are to be appointed, by proclamation, for the performance of quarantine; or the

privy council may order vessels to repair to certain places to be examined, without being liable to quarantine. Masters of vessels liable to quarantine are to hoist the yellow flag on meeting other vessels at sea, or being within two leagues of the United Kingdom, on penalty of £100. Masters refusing to answer interrogatories made to ascertain the state of their vessels, to forfeit £200; or omitting to disclose that they have touched at any infected place, forfeit £300; or refusing to convey their vessels to the place appointed for quarantine, or quitting them, or permitting any other person to quit them, forfeit £400. Persons arriving in any infected vessel, or going on board and quitting it before discharged from quarantine, to suffer six months' imprisonment and forfeit £300. Persons forging or uttering false certificates required by order in council, to be guilty of felony.

## VII. DISEASES IN ANIMALS.

The 11 & 12 V. c. 107, is directed against the spreading of the disease called the *sheep-pox*, and provides, that any infected sheep or lambs exposed for sale may be seized by any officer of the market or fair, or any constable or police officer, who is to report such seizure to the mayor, or to two justices having jurisdiction, who may cause the same to be restored, if the seizure was unnecessary, or direct them to be destroyed, together with any pens, hurdles, litter, hay, straw, or other articles likely to have been infected. Any person knowingly bringing sheep or other animals so infected to such market or fair, incurs a penalty not exceeding £20 for each offence. By s. 2, any person depasturing any such sheep or other animals on any unenclosed place, is also liable to a similar penalty. If any person *expose meat for sale unfit for human food*, it may be seized as before; and, upon conviction, the same is to be destroyed, and the person incurs a penalty not exceeding £20. The privy council are empowered to make orders for prohibiting or regulating the removal of infected sheep, cattle, or other animals, or of the meat, hides, or other parts of them; and for purifying yards, stables, outhouses, and wagons, carts, or other vehicles, and for directing how animals dying of an infectious disorder are to be disposed of; and they may cause notices to be given of the disease, and make, alter, or revoke any regulations for the purpose of giving effect to the provisions of this act, every offence against which incurs a penalty for each offence not exceeding £20. All orders and notices are to be published in the *London Gazette*; and, if they apply to a particular district, in the local newspapers also, and the orders to be laid before parliament. Obstruction to the execution of the act, subjects to a penalty not exceeding £5, or imprisonment not exceeding two calendar months.



Act continued and amended by 17 V.c. 62, and 20 V. c. 101, so that if any person knowingly bring or attempt to bring for sale into any market, fair, or other public place, where animals are commonly exposed for sale, any *glandered horse, or other animal*, or turn out, or depasture any such diseased animal in any forest, close, wood, moor, road-side, or other uninclosed place, he is subject to a penalty of £20.

#### VIII. SALE OF UNWHOLESOME PROVISIONS.

In general, any practices by which a man's health is injured, or the vigour of his constitution impaired, are punishable, as by selling unwholesome provisions, by the exercise of a noisome trade which pollutes the air in the neighbourhood, or by the neglect or unskilful management of his physician, surgeon, or apothecary. It is a misdemeanor to give any person *injurious* food to eat, whether the offender be excited by malice or desire of gain. The 51 H. 3, amended by 11 & 12 V. c. 107, punishes the sale of *unwholesome* flesh with fine and imprisonment; and the Court of Queen's Bench (Jan. 29, 1834) sentenced a fishmonger to pay a fine of £50 for selling *unsound* fish. By 12 C. 2. c. 25, any brewing or adulteration of wine is punished with the forfeiture of £100, if done by the wholesale merchant, and £40 if done by the vintner or retail dealer. By 1 W. & M. c. 34, it is more generally provided, that any person who shall sell wine, by wholesale or retail, who shall adulterate it, or sell it adulterated, shall forfeit £300 for each offence, half to the king, and half to him who shall sue for it, and shall be imprisoned three months.

### CHAPTER XI.

#### *Offences against Public Order and Police.*

##### I. CLANDESTINE MARRIAGE.

THE law having provided for the religious or public solemnization of marriage, it is an offence to celebrate the ceremony in a *clandestine manner*, and may be included among the number of offences against public order and police, by not partaking of that notoriety essential to its due celebration, and the knowledge of parties interested in the event.

By 6 & 7 W. 4, c. 85, persons unduly and knowingly solemnizing marriages in any other than a church or chapel of the establishment, or registered building, or in absence of registrar, or in less time than act prescribes (except by special

licence), are guilty of felony. But prosecutions are to be commenced within three years. If any person knowingly intermarry in any other than the place specified in the notice and certificate, or without notice to the superintendent, or due certificate of notice, or without licence when necessary, or in the absence of a registrar or superintendent where his presence is required, the marriage is void.

Where a *valid* marriage is had by wilfully false notice, &c., the offending party forfeits all interest in property accruing by the marriage.

Persons wilfully making false declaration, or signing false notice or certificate, or forbidding the issue of a certificate by false representation, are liable to the penalties of perjury.

Clandestine marriages are punishable at common law, independent of the Marriage Act (p. 149), with fine and imprisonment.

## II. BIGAMY.

Bigamy or polygamy is where a man marries a plurality of wives, or a woman a plurality of husbands.

By 9 (4. 4, c. 38, s. 22. if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere, every such offender, or every person counselling or abetting such offender, shall be guilty of *felony*, subject to be transported for seven years, or imprisoned, with or without hard labour, for not exceeding two years. But not to extend to any second marriage contracted out of England, by any other than a subject of her majesty; or to any person marrying a second time, whose husband or wife shall have been continually absent for seven years, and not have been known to be living within that time; or to any person who, at the time of such second marriage, shall have been divorced; or to any person whose former marriage shall have been declared void by the sentence of a court of competent jurisdiction.

In prosecutions under this statute, the *first* wife or husband is not a competent witness to prove the first marriage, since neither can be a witness in the other's case, but the second is, because the second marriage, in law, is no marriage at all.

## III. GAMES, WAGERS, LOTTERIES.

Gaming, or speculating on the chance of winning or losing money by any play, game, or diversion, is an offence not punishable at common law, unless it is so practised as to be injurious to the public economy; but, by statute, the Legislature has, in many instances, laid it under particular restraints.

By 8 & 9 V. c. 109, such part of the 33 Hen. 8, c. 9, is re-

pealed, as imposes penalties for games of skill, such as bowls, tennis, and quoits; and for lacking bows and arrows, or for not maintaining butts; for mayors, sheriffs, and constables, not searching for places where dicing, carding, or gaming shall be suspected to be carried on; and also for that part which allows gentlemen and noblemen to license their servants to play at cards, dice, or any unlawful game.

In default of other evidence proving any house or place to be a *common gaming-house*, it is sufficient, in support of the allegation in any indictment or information that any place is a common gaming-house, to prove that such place is kept or used for playing therein at any *unlawful game*, and that a bank is kept there by one or more of the players, exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; every such place is deemed a common gaming house contrary to law and the act of Henry VIII., and by all other acts against unlawful games or gaming-houses.

The power of the justices may be exercised by warrant, and on conviction before any two justices, either by evidence or their own confession, any owner or keeper of a common gaming-house may be fined in the sum of not above £100, or imprisonment for not more than six months, with or without hard labour, at the discretion of the justices; in case of the penalty not being paid a distress may be levied: if thought proper, the keeper of a gaming-house may still be proceeded against by indictment, but not for the same offence, if punished summarily; nor is it necessary under this act to prove that any person found playing at any game was playing for money, wager, or stake.

The commissioners of police may authorize the superintendent or constables to enter gaming-houses, to seize all instruments of gaming and all monies, and to take into custody all persons found therein; they may also search all parts of the house for instruments of gaming.

Where any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game shall be found in any house, room, or place suspected to be used as a common gaming-house, and entered under a warrant or order, or about the person of any of those who shall be found therein, it shall be evidence, until the contrary be made to appear, that such place is used as a *common gaming-house*, and that the persons found in the place where such have been discovered were playing therein, although no play was actually going on in the presence of the constable entering the same: such tables and instruments of gaming being forthwith destroyed.

Witnesses are indemnified for all gaming transactions previous to the time of their giving evidence.

Justices at the general annual licensing meeting may grant licences, if they think fit, to the keepers of inns, public-houses, or beer-shops, for billiard-tables, bagatelle-boards, or instruments used in any game of a like kind; a notice of such licence to be publicly displayed; the neglect of which, or for being unlicensed, subjects them to be proceeded against as common gaming-houses, and also to a penalty of £10 for every day in which such games are played, or imprisonment, with or without hard labour, for any time not exceeding a month; with a distress on the goods if the fine is not paid.

No person, whether he be a licensed victualler, or hold a licence under this act, to allow of any play after one or before eight on any day, or at any time on Sundays, Christmas-day, or Good Friday, or on fast or thanksgiving days, under the penalties imposed for being unlicensed; and any licensed victualler allowing of any play at any time when such premises are not allowed to be open for the sale of wine, spirits, or beer, to be deemed liable to the same penalties as if unlicensed. Constables and officers of police empowered to enter any licensed house when they think proper; obstructions to them held contrary to tenor of licence, and punishable accordingly.

By s. 23, no prosecutions under this act legal unless notice is given to the party at least one month before, nor unless the action be brought within three months from the date of the offence. By s. 17, if any person, by CHEATING at cards, dice, or the holding of stakes, or in wagering on the event of any game, sport, or pastime, win any sum of money, such person shall be deemed to have obtained money under *false pretences*, and be punishable accordingly.

By s. 18, all contracts, whether by parole or in writing, by way of gaming or WAGERING, made null and void, and not recoverable in any court of law or equity; but this clause not to apply to any subscription or agreement towards any plate or prize to be awarded to the winner in any lawful game or pastime.

The provisions of 8 & 9 V. c. 109, were partly frustrated by the keepers of gaming-houses fortifying the entrances to their houses, by which time was afforded to the gamblers to conceal or destroy the cards, dice, balls, or other instruments of gaming, so that the officers who visited such houses were unable to produce the needful evidence of a gaming-house. To remedy such defect of testimony, the 17 & 18 V. c. 38, was passed, and provides that any person who shall obstruct or delay the entrance of a constable or other officer, by any bolt, bar, chain, or other contrivance, shall be liable on summary conviction to any

penalty not exceeding £100; or on non-payment, with costs, may be committed to prison, with or without hard labour, for any period not exceeding six calendar months. Obstructing the entrance of a constable to be evidence of a house being a common gaming-house, s. 2. Persons arrested refusing to give their names and address, or giving false names or addresses, liable to a penalty not above £50. The keeper of a common gaming-house liable, on conviction, to any penalty not above £500; or on non-payment, with costs, may be imprisoned for twelve calendar months, with or without hard labour, ss. 3, 4. Justices may require of the persons apprehended to give evidence on oath, and on their refusal may be punished for contempt. Persons required to be examined as witnesses, and making a full discovery, to be freed from all penalties, s. 6. Penalties and costs may be levied by distress. Half the penalties to go to an informer, the remainder to the poor of the parish.

By 9 & 10 W. 3, c. 17, all lotteries are declared public nuisances; and, by 42 G. 2, c. 119, if any person shall keep any office or place for lotteries, called *little goes*, or any other lottery, or shall knowingly suffer it to be exercised or played at in his house, he shall forfeit £500. All state lotteries were discontinued after the 4 G. 4, c. 60, which was the last state lottery sanctioned by parliament.

By 6 & 7 W. 4, c. 66, if any person print or publish, or cause to be so done, any advertisement of any *foreign* or *other* lottery, not authorized by parliament, or any advertisement of the sale of any ticket, share, or chance in such lottery, he shall forfeit £50, to be recovered with *full costs* of suit in Westminster, Dublin, or Edinburgh; half to the queen, half to the informer or prosecutor. But by 8 & 9 V. c. 74, any such action for forfeiture or penalty must be instituted by the law officers of the crown in England, Scotland or Ireland.

By several statutes of the reign of G. 2, all private lotteries, by tickets, cards, or dice, and particularly the games of faro, basset, hazard, roulette, and other games with dice, except back-gammon, are prohibited, under a penalty of £200 by him that erects such lotteries, and £50 a time for the player. All raffles and other devices under the denomination of sales, which are equivalent to lotteries, are prohibited, under heavy penalty, by a great variety of statutes.

By 10 Anne, c. 26, persons setting up offices for insurances on marriages, births, and christenings, forfeit £500, and printers advertising, £100. By 8 G. 1, c. 2, persons setting up offices for sale of houses, lands, goods, or other things by way of lottery, forfeit £500. Persons selling or delivering tickets in any foreign lottery, forfeit £200.

By 5 G. 4, c. 83, all persons *playing or betting* in any *open or public* place, with any table or instrument of gaming, at any game or pretended game of chance, may be treated as vagrants.

Under 2 & 3 V. c. 47, within the metropolis limits the police are empowered on the complaint of two householders on oath, forcibly to enter any *gaming-house*; destroy the tables and instruments of gaming; seize all moneys and securities, and take all present into custody; and the managers of the house are liable to a penalty of £100, or six months' imprisonment, at the discretion of the magistrates, and others present to a penalty of £5. Proof of gaming for *money* not necessary to support an information.

#### IV. SUPPRESSION OF BETTING-HOUSES.

An extensive species of gaming having sprung up in houses of this description, tending to the injury and demoralization of improvident persons, by the occupiers receiving money in advance, on promise to pay money, on events of horse-races, and like contingencies, the 16 & 17 V. c. 119, provides for their suppression. Under this act, no house or office is to be kept or used for any such purpose, or for any assurance, promise, or agreement, expressed or implied, to pay or give any money or valuable thing on the event of any horse-race, fight, game, sport, or exercise; every house, office, room, or other place opened, kept, or used for such purposes, declared to be a *common nuisance* and *common gaming-house*, within the meaning of the 8 & 9 V. c. 109. Penalty on owner or occupier, on conviction before two justices, a sum not exceeding £100, with costs, or, on non-payment, to be committed to the house of correction, with or without hard labour, for six calendar months. Penalty on any owner or occupier of such house, office, &c., or any person having the care or management thereof, or of conducting the business of such places, or receiving money, or other valuable pertaining to the aforesaid contingencies, £50, with costs, or, on non-payment, three months' imprisonment with or without hard labour, s. 4. Money so received, on a deposit or bet, may be recovered with full costs of suit in any court of competent jurisdiction. Penalty on persons exhibiting placards, or publishing or advertising any card, writing, or sign, or *inviting* persons to resort to such betting-houses, £30 and costs, or two months' imprisonment, s. 7. Penalties may be recovered by distress, or, in case of commitment for penalty and costs, the costs only may be levied by distress. One-half of every pecuniary penalty to be paid to the informer, and the other half to the poor of the parish.

By s. 11, justices may order the search of suspected houses, and the metropolitan police may enter and search suspected

houses. One month's notice to prosecute must be given, and the prosecution commenced within three calendar months after the offence. Act extends to England and Ireland, not to Scotland.

## CHAPTER XII.

### *Homicide.*

HAVING in the preceding chapters considered those offences which either affect the Government or the interests of religion, commerce, and trade, or public order and police, we come next to consider those which are directed against the persons, habitations, and property of individuals.

Of crimes injurious to the person, the principal is Homicide, which is the killing a human being; and is either *justifiable*, *excusable*, or *felonious*. The first has no tinge of guilt; the second, very little; but the third is the highest crime that man is capable of committing against a fellow creature.

1. JUSTIFIABLE homicide, which it appears almost inconsistent to include in criminal delinquencies, is of divers kinds, including such as arise from unavoidable necessity or accident, without any imputation of blame or negligence in the party killing. Of this kind is homicide committed in the pursuit of justice, in the execution of any civil or criminal process; but in these cases the necessity must be real and apparent, as that the offender could not be arrested, or the riot suppressed, or the property stolen retaken, unless homicide had been committed.

Homicide is justifiable, committed in the prevention of any atrocious crime, as an attempt to murder, or to break into a house in the night time. A woman is justifiable in killing one who attempts to ravish her, unless the late statute, abolishing capital punishment for rape, has altered the old law; and so too, the husband or father may justify killing a man who attempts a rape on his wife or daughter; but not if he take them together by *consent*, for the one is *forcible* and *felonious*, not the other. Attempting a crime still more abominable may be punished by the death of the unnatural aggressor.

Justifiable homicide reaches not to crimes unaccompanied with *violence*, as the picking of pockets, or attempting to break open a house in the *day-time*, without an attempt at robbery. The general principle of the law appears to be this: that where a crime, in itself *capital*, is endeavoured to be committed by *force*, it is lawful to repel that force by the death of the party attempting it; but to kill a person in resisting a trespass or misdemeanor would be clearly manslaughter or murder.

2. **EXCUSABLE** homicide is committed either by *misadventure* or in *self-defence*.

Homicide by *misadventure* is where a man doing a lawful act, without any intention to hurt, unfortunately kills another; as where a man is at work with a hatchet and the head flies off and kills a bystander; for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting a child, a master his apprentice or scholar, or an officer punishing a criminal, and death ensues, it is only *misadventure*: but if he exceed the bounds of moderation, either in the manner, the instrument, or quantity of punishment, and occasion death, it is manslaughter at least, and may be murder; for the act of immoderate correction is illegal.

As prize-fighting and sword-playing are *unlawful*, if either of the parties be killed, such killing is felony, or manslaughter. And, in general, if death ensue from any idle, dangerous, and unlawful sport, the slayer is guilty of manslaughter.

There seems to be a solid distinction between boxing and fencing, which was adverted to in the case of *Hunt v. Bell*, 1 Bing. 1. To teach and learn to box and fence are equally lawful, they are both the art of self-defence; but sparring exhibitions are unlawful, because they tend to form prize-fighters, and prize-fighting is illegal.

Homicide in *self-defence*, from a sudden affray or quarrel, is rather excusable than justifiable in the English law. To excuse this species of homicide, it must appear that the slayer had no probable means, by fleeing, or otherwise, to escape from his assailant.

Formerly no man was held entirely free from guilt who took away the life of another without permission of the law; and it is said that both justifiable and excusable homicide were anciently punished by fine or forfeiture. But by 9 G. 4, c. 31, s. 10, it is expressly provided, that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner not felonious.

3. **Felonious** homicide is the killing of a human creature without justification or excuse, and is either *murder*, *manslaughter*, or *self-destruction*.

# I. MURDER.

Murder is defined, or rather described, by Sir Edward Coke, to be, "when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice *aforethought*, either expressed or implied."

Malice *aforethought*, by which is meant premeditated hatred



of the deceased, or destructive intention, is the great criterion by which murder is distinguished from every other kind of homicide, and may be either *expressed* or *implied*. *Express* malice is that deliberate intention to take away the life of another which is manifested by external signs, by lying in wait, menaces, former grudges, or concerted schemes to do him personal harm. This description takes in the case of DUELLING. If one kill another in a *deliberate* duel, under provocation of charges against his character, however grievous, it is murder in him and in his second, and also in the second of the deceased; and the bare incitement to fight, though under such provocation, is a high misdemeanor, *Rex v. Rice*, 3 R. E. 581. If two or more come together to do an *unlawful* act, of which the probable consequence may be bloodshed; as to maltreat a person, commit a riot, or to rob a house, and one of them kill a man, it is murder in them all, because of the unlawful act, the evil intended aforethought.

*Implied* malice is that inference which arises from the nature of the act, though no direct malice can be proved; as where a man deliberately poisons another, the law presumes malice, though no particular enmity can be established. So, too, in a *deliberate* duel, it is no answer to a charge of murder, as Justice Patteson told the jury in *King v. Jeffcott*, to say that it was done solely to vindicate reputation; if time has intervened for reflection, malice will be inferred, though no evidence is adduced of particular ill-will towards the deceased. Again, if a master refuse his apprentice necessary food, or treat him with such continued harshness and severity that his death is occasioned thereby, the law will imply malice, and the offence will be murder, *Leach*, 127. So, if a prisoner die by the cruelty or neglect of the gaoler, the party offending is criminal in the same degree.

If a man kill another suddenly, without a considerable provocation, the law implies malice. But if the person provoked had unfortunately killed the other by beating him in such a way as showed only an intent to *chastise* and not to kill him, the law so far considers the provocation of contumelious behaviour as to adjudge it only manslaughter, and not murder.

If one, intending to commit a felony, undesignedly kill a man, it is murder. So, if a person give a woman with child a potion to procure abortion, and it operate so violently as to kill the mother, this is murder in the person who gave it.

If two persons incite each other to commit self-murder together, and the means employed to produce death take effect upon one only, it is murder in the survivor. *Reg. v. Alison*, 8 C. & P. 418.

Although a bare *attempt to kill* is generally only a misdemeanor, yet an attempt to kill by certain means is a capital

felony. Thus, by 2 V. c. 85, to administer to, or to cause to be taken by, any person, any poison or other destructive thing, or by any means whatever cause to any person any bodily injury, *dangerous to life*, with *intent* to commit murder, is a capital felony, punishable with death. But unless there be an intent to commit murder, the infliction of any bodily injury, however grievous, is not a capital offence.

Every person convicted of murder, or of being accessory thereto, is punishable with *death*. Rescuing, or attempting to rescue, a murderer, subjects to transportation for life, or not less than fifteen years, or to imprisonment for not exceeding three years, with or without hard labour or solitary confinement. Attempting to rescue the body of a murderer, after execution, is punishable by transportation for seven years.

As to the time of execution, it is not requisite the punishment should be carried into effect the next day but one after sentence passed; but the judges have, by 6 & 7 W. 4, c. 36, the same authority in convictions for murder as in other capital offences; an alteration introduced to preserve from irrevocable punishment persons who may have been convicted on erroneous or perjured evidence. Hanging in *chains* or dissection is prohibited by 4 & 5 W. 4, c. 26, and burial within the precincts of the prison substituted. The remaining posthumous additions are, corruption of blood in the descendants of the murderer; forfeiture of his personal estate of every description to the queen, and the freehold lands and tenements in fee-simple escheat (subject to the crown's year, day, and waste) to the lord of the fee.

## II. MANSLAUGHTER

Is defined the unlawful killing of another, upon a sudden heat of passion, without previous malice expressed or implied.

If, upon a sudden quarrel, two persons fight, and one kill the other, it is manslaughter; and so it is if they, upon such an occasion, go out and fight in a field, for this is one continued act of passion. So, also, if a man be greatly provoked, as by pulling his nose, or by taking another in the act of adultery with his wife, and immediately kill the aggressor, it is only manslaughter. But in every case of homicide upon *provocation*, if there be a sufficient cooling time for passion to subside, and reason to interpose, and the person so provoked afterwards kill the other, this is deliberate revenge, and amounts to murder.

Manslaughter may also arise when, in the commission of some *unlawful* act, death ensues. As, if two persons play at sword and buckler, which is an unlawful game, and one kill the other, it is manslaughter.

So, when a person does an act lawful in itself, but in an unlawful manner, without due caution and circumspection, as, when

a work man flings down a stone, or piece of timber, into the street, and kills a man, this may be either excusable homicide, manslaughter, or murder, according to the circumstances under which the original act was done. If it were in a country village, where few passengers are, and he called out to all people to have a care, it is misadventure only; but if it were in London, or other populous towns, where people are continually passing, it is manslaughter, although he gave loud warning; and murder if he knew they were passing and gave no warning at all to them, being malice against all mankind.

The distinction between *murder* and *manslaughter* will be illustrated by the case of Francis Smith, who was indicted for murder at the Old Bailey, Jan. 13, 1804. The neighbourhood of Hammersmith had been alarmed by what was supposed to be a ghost. The prisoner went out with a loaded gun, with intent to apprehend the person who personated the ghost; he met the deceased, who was dressed in white, and immediately discharged his gun and killed him. Chief Baron Macdonald, Mr. Justice Rooke, and Mr. Justice Lawrence were unanimously of opinion that the facts amounted to the crime of murder. For the person who represented the ghost was only guilty of a *misdeemeanor*, and no one would have had a right to have killed him, even if he could not otherwise have been taken. The jury brought in a verdict of manslaughter, but the court said they could not receive that verdict; if the jury believed the witnesses, the prisoner was guilty of murder; if they did not believe them, they must acquit. Upon this they found a verdict of guilty. Sentence of death was pronounced, but the prisoner was reprieved.

The cases adduced by Mr. Justice Foster have been cited (iv. *Criminal Law Report*, 25) as apt illustrations of the higher and lower degrees of homicide. "A person driving a cart or carriage happeneth to kill. If he saw, or had timely notice of the mischief likely to ensue, and yet drives on, it will be *murder*, for it was wilfully and deliberately done. Here is the heart regardless of social duty which I have already taken notice of. If he might have seen the danger and did not look before him, it will be *manslaughter*, for want of due circumspection. But if the accident happened in such a manner that no want of care could be imputed to the driver, it will be accidental death, and the driver will be excused."—2. *Discourse on Homicide*, 269.

In *Rex v. Martin*, it was decided that causing the death of a child by giving it *spirituous liquors*, in a quantity unfit for its tender age, is manslaughter, 3 C. & P. 210.

The punishment of manslaughter is proportioned to the various shades of delinquency in the offence. By 9 G. 4, c. 31, s. 9, the culprit may be transported for life, or not less than seven years, or he may be imprisoned, with or without hard

labour, for not exceeding four years, or he may be dismissed with such pecuniary fine as the court may think fit to impose. Whether there can legally be an accessory to, **manslaughter** seems doubtful.

The offender in homicide, by the old rule of law, is exonerated unless death ensue within a year after the mortal hurt has been received.

### III. SELF-DESTRUCTION.

A *suicide* is one that deliberately puts an end to his own existence, or commits any act, the consequence of which is his own death. It is considered in law a felony committed by a person against himself; so that an attempt to commit suicide is a misdemeanor, punishable with fine or imprisonment. But in order to constitute a person *felo de se*, or self felon, it is essential that he be at years of discretion, and in his senses at the time he committed the offence.

Formerly, the punishment for self-destruction was ignominious burial in the highway, with a stake driven through the body; but the 4 G. 4, c. 32, allows the interment of the suicide in the churchyard or burial-ground of the parish; requiring, however, the omission of the funeral service, and that the interment shall be made within twenty-four hours from the finding of the inquisition, and take place between the hours of nine and twelve at night.

The usual practice of juries, in cases of self-murder, is to bring in a verdict of *insanity*; judging, probably, that the act of self-destruction is such a strange anomaly in human conduct, such a wide aberration from the principle of self-preservation, which universally actuates sentient beings, as to form of itself unequivocal testimony of deranged or maddened intellect.

## CHAPTER XIII.

### *Offences against the Persons of Individuals.*

#### RAPE.

**RAPE** is the offence of having carnal knowledge of a woman by force, against her will, which was a capital offence, till, by 4 & 5 V. c. 56, it was made punishable with transportation for life.

A boy under fourteen years of age is deemed in law incapable of committing a rape, and if he be under that age, no evidence will be admitted to show that in point of fact he could commit the offence. *Reg. v. Phillips*, 8 Car. & Payne, 736.

In an indictment for rape, the party ravished is an admissible witness ; but the value of her testimony must be left to the jury. For instance, if the witness be of good fame, if she presently discovered the offence, and made search for the offender ; if the party accused fled for it ; these are corroborative circumstances, which give greater probability to her testimony. But, on the other hand, if she concealed the injury, after she had an opportunity to complain of its perpetration ; if the place where the fact is alleged to have been committed is where it was possible she might have been heard, and made no outcry, these carry a strong, but not conclusive, presumption that her testimony is false and feigned.

Moreover, an assault to ravish, however shameless and outrageous it may be, unless it amount to some degree of consummation of the deed, is not a rape.

It is the essential character of this crime, that it must be against the will of the female on whom it is committed. And if a woman be beguiled into her consent, by any artful means, it will not be a rape ; and, therefore, having carnal knowledge of a married woman, under circumstances which induced her to suppose it was her husband, was held, by a majority of the judges, not to be a rape, *Rus. Ry. C. C.* 487. However, the crime is not mitigated by showing that the woman yielded at length to violence, if her consent were obtained by duress, or threats of murder ; nor will any subsequent acquiescence on her part do away with the guilt of the ravisher. It is a rape to force a prostitute against her will : so it is for a man to have forcible copulation with his own concubine, because the law presumes the possibility of a return to virtue. A man, however, cannot be himself guilty of a rape upon his own wife, for the marital consent cannot be retracted, 1 *Hale*, 629 ; but he may be criminal in aiding and abetting another in such a design.

All who are present, of both sexes, aiding in the perpetration of rape, are punishable with transportation for fourteen years or imprisonment for three years.

#### CARNAL KNOWLEDGE OF GIRLS.

By 9 G. 4, c. 31, s. 17, mitigated by 4 & 5 V. c. 56, unlawfully and carnally knowing any girl under the age of ten years, in which case the consent or non-consent is immaterial, as, by reason of her tender age, she is incapable of judgment or discretion, is punishable with transportation for life.

Carnal knowledge of a girl above the age of ten and under twelve years, with or without her consent, is a misdemeanor, subjecting the offender to imprisonment and hard labour for such term as the court shall award.

## PROCURATION FOR PROSTITUTION.

The odious practices resorted to by brothel-keepers, procuresses, and other infamous persons, to compass the defilement of young females, gave rise, in 1849, to the 12 & 13 V. c. 76, by which it is enacted, "That if any person shall by false pretences, false representations, or other fraudulent means, procure any woman or child under the age of 21 years to have illicit carnal connection with any man, such person shall be guilty of a misdemeanor, and shall, being duly convicted thereof, suffer imprisonment for a term not exceeding two years, with hard labour."

Where any prosecutor or other person appears before any court on recognizance to prosecute or give evidence under this act, the court is empowered to award compensation for loss of time, whether any bill of indictment shall or shall not be actually preferred, in the same manner as in prosecutions for felony, s. 2. See *Seduction*, p. 427.

## BUGGERY.

Sodomy or buggery, from the Italian *buggerare*, is a carnal copulation against nature, as a man or woman with an animal, or a man with a man; and was anciently punished with burning, some say burying alive.

By 9 G. 4, c. 31, s. 15, every person convicted of the abominable crime of buggery, committed either with *mankind* or any *animal*, is punishable with death as a felon.

If committed on a boy under fourteen, it is felony in the agent only, 1 *Hale*, 47.

Blackstone properly observes on this truly unnatural offence, that it is a "crime which ought to be strictly and impartially proved, and then as strictly and impartially punished. But it is an offence of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out; for, if false, it deserves a punishment inferior only to the crime itself."

Much difference of opinion formerly prevailed among legal authorities, whether the proof of both penetration and emission of semen was essential to constitute carnal knowledge in the offences of *rape*, *abusing girls*, and *buggery*. Prisoners have been repeatedly acquitted on the want of proof of emission, 1 *East*, P. C. 437; while, on the other hand, in one instance, the accused was found guilty under the direction of Mr. Justice Bathurst, who did not consider this fact necessary to the consummation of guilt. But in Hill's case, which was argued in 1781, a large majority of judges decided *both* circumstances were necessary, though Buller, Loughborough, and Heath main-

tained a contrary opinion. All difficulty, however, on these points is removed by Lord Lansdowne's act, the 9 G. 4, c. 31, s. 18, by which it is provided, that it shall not be necessary, in any of the crimes last mentioned, to prove the actual emission of seed in order to constitute carnal knowledge, but that the carnal knowledge shall be deemed complete upon proof of penetration only.

#### DESERTING SEAMEN.

By 9 G. 4, c. 31, s. 30, if a master of a merchant vessel, being abroad, force any man on shore, or wilfully leave him behind, or refuse to bring home the men he carried out, if in a condition to return when he is ready to proceed on his homeward voyage, he is guilty of a misdemeanor, and liable to be imprisoned for such term as the court shall award. It is provided that offences of this description may be prosecuted by indictment or information at the suit of the attorney-general in the Court of Queen's Bench; and the court, if necessary, may appoint a commission to examine witnesses abroad.

#### KIDNAPPING.

This is an inferior description of offence against the person, and amounts only to a misdemeanor: it consists in carrying off a man, woman, or child, from their own country and sending them into another. It is punishable by the common law with fine and imprisonment.

#### CHILD-STEALING.

This has latterly become an offence of more frequent occurrence than the last, and is provided for by 9 G. 4, c. 31, s. 21. If any person shall maliciously, by force or fraud, lead, take, or carry away, or drag, or entice away, or detain, any child under the age of ten years, with intent to deprive the parent or any other person, having the lawful care or charge of such child, of the possession of it; or with intent to steal any article of apparel, or ornament, or value upon the person of such child; or shall conceal or harbour any child so stolen: every such person and their accomplices shall be guilty of *felony*, subject to transportation for seven years, or to imprisonment, with or without hard labour, for not exceeding two years; and, if a male, once, twice, or thrice whipped, in addition to imprisonment. But there is an exception in the statute in favour of fathers claiming a right to take their illegitimate children from the mother, and of those who claim the legal possession of them.

## ABDUCTION OF WOMEN.

The taking away of a child from a parent by any sinister means, as, violence, deceit, conspiring, intoxication, or fraud, for the purpose of marrying it, was always indictable as a misdemeanor, and in particular cases punishable as a capital felony; and an indictment will now lie for a conspiracy to marry an infant, in order to obtain the possession of fortune. By 9 G. 4, c. 31, s. 19, it is enacted, that where any woman shall have interest, present or future, in any real or personal estate, or shall be heiress presumptive, or next of kin, to any one having such interest, if any person shall, from *motives of lucre*, take away or detain such woman against her will, *with intent* to marry or defile her, or to cause her to be married or defiled by any other person; every such offender, and every person counselling, aiding, or abetting him, shall be guilty of FELONY, subject to transportation for life, or for any term not less than seven years, or to imprisonment, with or without hard labour, for any term not exceeding four years.

By the same statute, section 20, if any person shall unlawfully take, or cause to be taken, any unmarried girl under *sixteen years of age*, out of the possession and against the will of her father or mother, or other person having the lawful charge of her; every such offender shall be guilty of a misdemeanor, subject to fine or imprisonment, or both, as the court shall award.

It is an offence within the statute to take away from the custody of her *putative* father a natural child under sixteen years of age.

As the offence of abduction is positively prohibited, the absence of a corrupt motive will not be a defence to the charge; and it is no legal excuse that the defendant made use of no other means than the common blandishments of a lover to induce her to elope and marry him.

## ATTEMPTS TO PROCURE MISCARRIAGE.

If any person, with *intent* to procure the miscarriage of any woman, unlawfully and maliciously administer to her, or cause to be taken by her, any poison or other noxious thing, or use any instrument or other means whatever, with the like intent, every such offender, and every person counselling, aiding, or abetting therein, is guilty of felony, subjecting to transportation for life, or for any term not less than fifteen years, or imprisonment for any term not exceeding three years, 9 G. 4, c. 31; 1 V. c. 85.

The former of these statutes made a distinction in the punishment of attempts to procure abortion in the case of a woman "quick with child," and that of a woman "being with child,



but not being, or not being proved to be, quick with child :” in the former case the punishment was death ; in the other transportation. But the 1 V. c. 85, mitigates the capital punishment, and assimilates the two offences ; the present act does not even make it essential in attempts to procure miscarriage, that the woman shall have been with child at all. The word *pregnant* was in the bill as it came to the house of lords, but was erased at the suggestion of Lord Lyndhurst, who urged that the *intent* was the same in either case, and so therefore ought to be the punishment.

By 9 G. 4, c. 31, s. 14, if any woman be delivered of a child, and by secret burying, or otherwise disposing of the dead body, endeavour to *conceal the birth* thereof, every such offender shall be guilty of a misdemeanor, and liable to be imprisoned, with or without hard labour, for any term not exceeding two years. In this case, it is not necessary to prove whether the child died before, at, or after its birth, the fact of secreting the dead body to conceal the birth constituting the crime ; and this, contrary to former enactments, whether perpetrated by a *married* or *single* woman.

If a woman indicted for the murder of her child be acquitted, the jury by whom she is tried may find, provided it so appear in evidence, that she was delivered of a child, and that by secreting the dead body she endeavoured to *conceal the birth* ; upon which the court may pass sentence as if she had been convicted of the misdemeanor of concealing the birth.

#### ADMINISTERING DRUGS OR CHLOROFORM.

By 1 V. c. 85, s. 2, whoever shall, with *intent* to commit murder, administer to, or cause to be taken by any person, any poison or other destructive thing, or shall by *any means whatever* cause to any person any bodily injury, dangerous to life, shall be guilty of felony, punishable with DEATH.

Although no *bodily injury be effected*, if any person, with intent to commit murder, administer any poison or other destructive thing ; or shoot at, or attempt to discharge any kind of loaded arms ; or attempt to drown, suffocate, or strangle any person, he is guilty of felony, punishable with transportation for life, or for not less than fifteen years, or imprisonment for not more than three years, *id.* s. 3.

By 14 & 15 V. c. 19, s. 3, persons using *chloroform* or other stupefying thing, or drug, in order to aid them in the commission of a felony, are guilty of felony, liable to transportation for life, or not less than seven years, or to imprisonment for not exceeding three years, with or without hard labour.

## SALE OF ARSENIC.

As the unrestricted sale of arsenic has facilitated the commission of the crimes mentioned in preceding section, the 14 V. c. 18, enacts that every person who sells any arsenic shall, before delivery to the purchaser, enter in a book, according to a prescribed schedule, or the *like effect*, the particulars of such sale, namely, the quantity of arsenic sold, the purpose for which it is stated to be required, the day of the month, and year of the sale; and the name, place of abode, and condition or occupation of the purchaser; into all which particulars the seller is authorised and required to inquire before delivering the arsenic to the purchaser. Such entries to be signed by the seller and buyer, or if the buyer profess to be unable to write, the fact to be added, "cannot write," and where a witness is requisite, as in next section, to the sale, such witness to sign his name and abode.

By s. 2, no person is to sell arsenic to a person unknown to the seller, unless the sale be made in the presence of a witness who is known to the seller, and to whom the buyer is known; such witness to sign his name and abode, before the delivery of the arsenic. No arsenic is to be sold to any person who is not of full age.

S. 3 provides for *colouring* arsenic, by enacting, that no person shall sell arsenic unless, before the sale, it be mixed with soot or indigo, in the proportion of one ounce of soot, or half an ounce of indigo at the least, to one pound of arsenic, and so in proportion for any greater or less quantity. Provided, however, such arsenic is stated by the purchaser not to be required for agriculture, but for some other purpose for which such admixture would render it unfit, it may be sold unmixed in a quantity of not less than ten pounds at one time.

Neglect of any of these provisions either by seller, buyer, or witness; or giving false information in relation to the particulars the seller is authorised to inquire into, subjects for each offence to a penalty of £20, upon summary conviction before two justices in England or Ireland, or two justices or a sheriff in Scotland. But the provisions of the act do not extend to sales of arsenic in medicine, under a regular medical prescription; or to sales by wholesale to retail dealers, upon order in writing in the ordinary course of wholesale dealing. In the construction of the act the word "arsenic" includes all other colourless poisonous preparations of arsenic.

In attempts to administer poison, it seems not necessary that there should be a *manual* delivery; leaving poison in the way of another, with intent to kill, would, it appears, constitute an administering, *Rex v. Harley*, 4 Car. & Payne, 369.

## MALICIOUSLY WOUNDING.

By 1 V. c. 85, s. 4, unlawfully and maliciously to shoot at, or in any manner attempt to discharge any kind of loaded arms, or to stab, cut or *wound*, any person with intent [to *main, disfigure, or disable* such person, or do some other grievous bodily harm; or with intent to prevent the apprehension of the party so offending, or of his accomplices, subjects to transportation for life, or not less than fifteen years, or imprisonment for not more than three years.

This is an amendment of 9 G. 4, c. 31, s. 12, and it is not now necessary, in order to convict the offender, that if death had ensued from the act charged, the crime of *murder* would have been committed. By this improvement these disgraceful exhibitions of ruffianly vengeance, at one period so frequent in this country, especially in the northern counties, and which under the previous law escaped any heavier punishment than that of an ordinary assault, will be brought within the reach of the statute.

## MALICIOUS INJURIES BY FIRE OR DESTRUCTIVE MATERIALS.

The law not being effective for the purpose, the 9 ~~th~~<sup>th</sup> V. c. 25, enacts, that whoever shall maliciously, by the ~~explosion~~ of gunpowder or other explosive substance, destroy or damage any dwelling-house, any person being therein, is guilty of felony, subjecting to transportation for life, or not less than fifteen years, or imprisonment not exceeding three years. Blowing up any building with intent to murder, or whereby the life of any person is endangered, or by any explosive substance doing any grievous bodily harm to any person; or causing to explode, or sending, delivering, or casting upon any person, any explosive substance or corrosive fluid, whereby grievous bodily harm is occasioned: all these offences subject to the preceding punishment. Attempting any of these offences subjects to transportation for not less than fifteen years, or imprisonment for not exceeding two years.

The manufacturing or having in possession any explosive substance, or any dangerous or noxious thing, or any machine or instrument for the purpose of committing any of the above offences, is a misdemeanor, liable to imprisonment for not exceeding two years.

Male offenders under eighteen years of age, convicted under this act, may, in addition to any other sentence, be publicly or privately whipped, not exceeding thrice.

Any constable or peace-officer may take into custody, without warrant, any person whom he shall find loitering in any place during the night, and whom he shall have good cause for sus-

pecting of any felony under the act; but such person not to be detained after noon of the following day without being brought before a justice.

#### MALICIOUS OFFENCES ON RAILWAYS.

By 14 & 15 V. c. 19, if a person maliciously place or throw upon a railway any wood, stone, or other thing, or remove any rail, sleeper, or other thing, or move or divert any point or other machinery, or show, hide, or remove any signal or light, or do, or cause to be done, any other thing, with intent, in any of the said cases, to obstruct or injure any engine or carriage using such railway, or to endanger the safety of any person travelling or being upon such railway, every such offender, on conviction, is liable to be transported for life, or not less than seven years, or to be imprisoned, with or without hard labour, for a term not exceeding three years. A like punishment is enacted if a person maliciously throw, or cause to fall or strike against, into, or upon any engine or carriage on any railway, wood, stone, or other matter, with intent to endanger the safety of any person.

Maliciously to set fire to any station, engine-house, or other building appertaining to a railway, dock, canal, or other navigation, subjects to transportation for life, or any term not less than seven years, or to imprisonment, with or without hard labour, for not exceeding three years; and if a person maliciously set fire to any goods on a railway, or building, he is liable to transportation for not above ten nor less than seven years, or to imprisonment for not above three years.

#### ASSAULTS.

Of minor assaults, for which the sufferer seeks redress by action, we have already spoken, under the head of Civil Injuries: in this section we shall notice the more serious attacks on the person, which, either from endangering the officers of justice, the security of industry and property, or the public peace, are more properly an object of criminal punishment than individual prosecution.

By 9 G. 4, c. 31, s. 24, to assault and strike or wound any *magistrate, officer, or other person* lawfully authorized, when discharging his duty, in the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, subjects the offender to transportation for seven years, or to imprisonment, with or without hard labour, for such term as the court shall award.

The 25th section provides, that persons convicted of any of the following offences as misdemeanors, that is, of any assault

with intent to commit felony; of any assault upon a peace or revenue officer in the due execution of his duty, or upon any person acting in aid of such officer; of any assault upon any person with intent to prevent the lawful apprehension of the party so assaulting, or of any other liable, by law, to be apprehended; or of any assault committed in pursuance of any conspiracy to raise wages: in any of these cases the offender may be imprisoned for any term not *exceeding two years*, and also fined, and required to find sureties to keep the peace.

By section 26, to beat, wound, or use violence to prevent any *seaman, keelman, or caster* from exercising his trade or occupation; or to use violence with intent to hinder any one from selling or buying any *wheat, or other grain, flour, meal or malt*, in any market or other place; or towards any person having charge of such commodities, with intent to stop their conveyance, subjects the offender, on the conviction of two justices of peace, to imprisonment and hard labour for not exceeding ~~three~~ calendar months. .

Sections 27, 28, 29, grant a summary power of punishing persons for COMMON ASSAULTS, by enacting, that if any person assault another, two justices of peace, upon complaint by the aggrieved party, may determine the offence, and the offender be sentenced to pay any fine, which, with costs, does not exceed £5; or, on non-payment, be imprisoned for not more than two calendar months. If the justices dismiss the complaint, they are to deliver a certificate, stating the fact of such dismissal, to the party against whom the complaint was preferred: and the conviction or certificate shall be a bar to any future proceedings. When the justices shall deem any assault or battery felonious, or a fit subject for prosecution by indictment, they may abstain from any adjudication, and deal with the case as they would have done before the passing of the 9 G. 4, c. 31. But they are not to determine any case of assault or battery in which any question shall arise as to title to property, or as to any bankruptcy or insolvency, or any execution under process of any court of justice.

The 9 G. 4, c. 31, is amended by 16 V. c. 30, empowering two justices in the country, or one magistrate in the metropolis, or a stipendiary magistrate elsewhere, to punish on summary conviction any person charged with an assault upon *any female*, or *any male under fourteen years of age*, and occasioning actual bodily harm, by six months' imprisonment with or without hard labour, or by a fine not exceeding £20, with costs. Upon expiration of punishment, the offender may be bound to good behaviour for six calendar months.

The 1 V. c. 85, s. 11, supplies a great defect in criminal justice, by enacting that, on the trial for any offence under this statute, or for any *felony whatever*, when the crime charged shall

include an *assault against the person*, the jury may acquit of the felony, and convict of the assault, if the evidence warrant such finding; and thereupon the court may imprison the party for any term not exceeding three years. This dispenses with the necessity of a new trial. Under the old law, if the principal charge (as in rapes, &c.) could not be established against the accused, it was necessary to acquit him and frame a new indictment for the minor offence.

By 2 & 3 V. c. 47, s. 65, the constables of the metropolitan police, within their limits, may apprehend *without a warrant* for a recent and aggravated assault, though not committed in their presence; a power which constables elsewhere are not empowered to exercise.

By 3 & 4 V. c. 50, the board of directors of any canal or navigable river, or their clerk or agent, are authorized to nominate such persons as they think fit to two justices, to be appointed to act as constables to preserve the peace on canals and rivers, or railways connected therewith, and within one-quarter of a mile thereof.

#### AGGRAVATED ASSAULTS.

For the punishment of an *aggravated assault*, the 14 & 15 V. c. 19, s. 4, enacts that if any person maliciously inflict upon another, either with or without any weapon or instrument, any grievous bodily harm; or maliciously cut, stab, or wound; he is liable to be imprisoned, with or without hard labour, for any term not above three years.

### CHAPTER XIV.

#### *Offences against the Habitations of Individuals.*

THE offences that more immediately affect the habitations of individuals are *arson*, *burglary*, *housebreaking*, and *stealing in a dwelling-house*; but the last will fall under the subsequent head of THEFT.

*Arson* is the malicious burning of the whole or part of the house, building, ship, or agricultural produce of another, by night or by day, with intent to injure or defraud.

By 1 V. c. 89, s. 2, the maliciously setting fire to any dwelling-house, *any person being therein*, is a capital felony, punishable with death. And sections 4, 5, subject to the same extremity of punishment the setting fire to *ships or vessels*, with intent to commit murder; or the hanging out false lights to cause shipwreck.

The setting fire to any church, chapel, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary; or to any building or erection used in carrying on any trade or manufacture, whether the same shall be in possession of the offender or other person, with intent to injure or defraud any person, is felony, subjecting to transportation for life, or not less than fifteen years, or imprisonment for not more than three years, s. 3. By sections 6, 9, the same punishment is awarded for setting fire to coal-mines; or to ships or vessels, with intent to defraud the owners thereof, or of any goods on board, or the underwriter of any policy of insurance of the ship, vessel, or goods.

Setting fire to *agricultural produce*, in which is included any *stack* of corn, grain, pulse, tares, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, or wood, or any steer of wood, subjects to transportation for life, or not less than fifteen years, or imprisonment for not exceeding three years, s. 10.

Lastly, by 7 & 8 G. 4, c. 30, s. 17, the setting fire to any *crop* of corn, grain, or pulse, whether standing or cut down; or to any part of a *wood, coppice, or plantation of trees*, or to any *heath, gorse, furze or fern*, subjects to transportation for seven years, or to imprisonment, with or without whipping, for not more than four years.

A fire through negligence does not amount to *arson*; but, by the 6 Anne, c. 31, any servant negligently setting fire to a house or outhouse shall forfeit £100, or be sent to the house of correction for eighteen months.

A person wilfully setting fire to his own house *in a town*, without injuring or intending to injure another, is a high misdemeanor, though it does not amount to arson; and is punishable by imprisonment and perpetual sureties for good behaviour.

It has been decided that an attempt, or preparation, by a man to set fire to his own house in a town, though the fire be never kindled, is a misdemeanor; and that every attempt to commit a felony is a misdemeanor; and in general an attempt to commit a misdemeanor is an offence of the same nature. The law adopts the maxim of taking the *will for the deed*, both in treason and misdemeanor.

## II. BURGLARY.

Burglary, or nocturnal housebreaking, is either a capital or lesser felony.

By 1 V. c. 86, s. 2, whoever burglariously breaks and enters a dwelling-house, any person being therein, and assaults with intent to murder, stab, cut, wound, beat, or strike, is guilty of felony, punishable with death. Burglary, simply, unaccompa-

nied with murderous intent, or personal violence, is punishable with transportation for life, or not less than ten years, or imprisonment not exceeding three years.

The statute limits the nocturnal hours by explaining the night to extend from nine in the evening to six next morning; so that the former vague test of ascertaining whether there was sufficient light to discern a man's face is no longer requisite.

By 7 & 8 G. 4, c. 29, s. 13, no building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house, for the purpose of burglary, unless there be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from one to the other.

By 14 & 15 V. c. 19, if any person be found *in the night* armed with any dangerous or offensive weapon, with intent to break into any house, and commit any felony therein, or have in his possession without lawful excuse, any picklock key, crow-bar, or other implement of housebreaking, or have his face blackened or otherwise disguised, or be found *by night* in any house with intent to commit a felony, such offender is guilty of a misdemeanor, liable to be imprisoned, with or without hard labour, for any term not exceeding three years. Conviction of such misdemeanor, after a *previous* conviction either of felony or such misdemeanor, renders the offender liable to transportation for ten years, or imprisonment not exceeding three years.

To constitute Burglary, the breaking must be in the *night*.

2. It must be a *dwelling-house*; that is, a place where some person generally or occasionally resides, so that a warehouse or other unoccupied place is not entitled to the same protection.

3. There must be an *entry* with a *felonious* intent; the *entry* may be by taking out the glass, picking or opening a lock, by lifting the latch, or flap of a cellar usually kept down by its own weight (*Moo. C. C. R.* 377); or unloosing any fastening, as of a window, by introducing the hand through a broken pane, or even by stepping over the threshold, provided it is with a *felonious* intent, that is, to commit a murder, rape, or robbery: all these are burglarious entries. It does not seem, as formerly, that both the entering and breaking out need be nocturnal; if the entering be by day, and the breaking out by night, it is sufficient. It has been decided even, if a person commit a felony in a house, and break out of it in the night time, this is burglary, though he were lawfully in the house as a lodger. *Reg. v. Wheeldon*, 8 C. & P. 747.

If a servant open and enter his master's door with a felonious design, or if any other person, lodging in the same house, or in a public inn, open and enter another's door, with such felonious intent, it is burglary.



If a person conspire with a robber, and let him in, it is burglary in both. So, also, to knock at the door, and, upon opening it, rush in, with a felonious intent; or, under pretence of taking lodgings, to fall upon the landlord and rob him.

A chamber in a college, or an inn of court, where each occupant has a distinct property, is the *dwelling-house* of the owner. So, even a loft over a stable, used for the abode of a coachman, which he rents for his own use and that of his family, is a place which may be burglariously broken, 1 *Leach*, 305. A burglary may be also committed in a lodging-room, or in a garret used for a workshop, and rented together with an apartment for sleeping; and if the landlord does not sleep under the same roof, the place may be laid as the dwelling of the lodger. But if I hire a shop, part of another man's house, and work or trade there, but never lodge there, it is no dwelling-house, nor can burglary be committed therein. Neither can burglary be committed in a tent or booth erected in a market or fair, though the owner may lodge there; for the offence can be committed only in permanent edifices.

### III. HOUSEBREAKING.

Breaking and entering any dwelling-house, and stealing therein any chattel, money, or valuable security, to any value, subjects to transportation for not exceeding fifteen, nor less than ten years, or imprisonment for not exceeding three years, 7 & 8 G. 4, c. 29; 3 & 4 W. 4, c. 44; 1 V. c. 90.

Breaking and entering any building within the *curtilage* of a dwelling-house, or a shop, warehouse, or counting-house, and stealing therein, is subject to a like punishment, by 1 V. c. 90.

The term *curtilage*, used in the act, is not easily defined; but it would seem, from Hawkins, to be the common fence, or boundary, including any outhouse or barn within the homestead.

For the definitions of *breaking* and *entering*, see *Stealing in a Dwelling-House*, p. 538.

## CHAPTER XV.

### *Offences against Private Property.*

THE chief enactments of the criminal law were formerly directed to the restraint of violence, and intended more to protect the person from outrage, than property from depredation. Lawless force, not fraud, was then the prominent characteristic of crime. The increase of riches, and the fact that the ferocious

and vengeful passions of our nature are more under the control of reason and mental culture, have given a new complexion to the criminal calendar, as evidenced in the diminution of personal and the increase of property offences. In consequence of this social revolution, the most arduous task of the modern legislator is not to protect the persons of individuals from open or atrocious assault, but their possessions from crafty, insidious, and fraudulent appropriations. The numerous and increasing class of offences directed against the security of private property will occupy the four remaining chapters, under the following heads :—

1. *Forgery.*
2. *Theft.*
3. *Malicious Mischief.*
4. *Game Laws.*

Forgery is the fraudulent making or altering a written instrument, to the detriment of another, for which the punishment is fine and imprisonment, or transportation. The capital punishment, which had been retained for forging wills, or a power of attorney to transfer stock, is mitigated by 1 V. c. 84, and no kind of forgery is now punishable with death.

To constitute forgery, it is not necessary the *whole* instrument should be fictitious. Making a fraudulent insertion, alteration, or erasure, in any material part of a true document, by which another may be defrauded; the fraudulent application of a false signature to a true instrument, or a real signature to a false one; and the alteration of the date of a bill after acceptance, by which its payment may be accelerated,—are forgeries.

If a note be made payable at a banker's who fails, it is forgery to introduce a piece of paper over the name of the banker who has failed, containing the name of another banking-house, 2 *Leach*, 1040. Expunging an endorsement on a bank-note with a liquor unknown, is held to be an erasure within the statute.

The essence of forgery is an *intent to defraud*, and, therefore, the mere imitation of another's writing, the assumption of a name, or the alteration of a written instrument, where no person can be injured, does not come within the definition of the offence. Neither does the using a fictitious name, though for the purpose of concealment and fraud, amount to forgery, unless it were for that precise species of fraud of which the forgery forms a part, *Russ. & Ry. C. C.* 269.

Whether the fraud be effected on the party to whom the instrument is addressed, or whose writing is counterfeited, or upon a third person, who takes it upon the credit it assumes, is

immaterial; nor is it of consequence whether the counterfeited instrument be such as, if real, would be effectual to the purpose it intends, so long as there is sufficient resemblance to impose upon those to whom it is uttered. Thus, the fabrication of an order for the payment of a sailor's prize-money is forgery, though it be invalid, as wanting the requisites required by law, 2 *Leach*, 883.

Lastly, to complete the offence, the instrument forged should be parted with, or tendered, or offered, or used in some way to get money or credit upon it. Delivering a box, containing, among other things, forged stamps, to the party's own servant, to be forwarded by a carrier to a customer in the country, is an uttering, 4 *Taunt*. 300. But merely showing a man an instrument, the uttering of which would be criminal, is not an uttering.

The statutes which prescribe the different punishments for forgery are chiefly the 1 W. 4, c. 66, and the 1 V. c. 84, and the offences are classed according to the nature of the instrument altered or forged.

*Seals and Sign Manual.*—Forging the great seal of the United Kingdom, the queen's privy seal, or privy signet of her majesty, the royal sign manual, or the seals of Scotland or Ireland, or uttering the same, is treason, subjecting to transportation for life, or not less than seven years, or imprisonment for not exceeding four nor less than two years; in the latter case, with or without hard labour and solitary confinement for any period not exceeding one month at a time, or three months in the whole.

*Wills, Power of Attorney, Stock.*—To forge, alter, offer, or utter any will or *codicil*; or to forge, alter, or utter any *power of attorney* or other authority, to transfer any share or interest in any stock, annuity, or other public fund, transferable at the Bank of England, South Sea House, or the Bank of Ireland; or to receive any dividend payable in respect of such share or interest, or procure or assist in the commission of any of the said offences,—in all these cases the offender is subject to a like discretionary punishment, as mentioned in the preceding paragraph.

To forge, alter, offer, or utter an Exchequer bill, Exchequer debenture, India bond, Bank of England note, bill of exchange, promissory note, warrant, order, undertaking for the payment of money, or an assignment, endorsement, or acceptance thereon, is punishable with transportation for life, or seven years, or imprisonment as already mentioned. So is the making false entries in the books in which the accounts of *public stock* are kept at the Bank of England and South Sea House, or fraudulent transfers in any other name than the true owner's; forging

a transfer of any public stock, or stock of any public company ; or *personating* the owner of any public stock, and endeavouring to transfer or receive interest thereon.

Forging the *attestation* to a power of attorney is punishable with transportation for seven, or imprisonment for one or two years. Clerks of the Bank or South Sea House, fraudulently making out dividend warrants for a greater or less sum than due, are punishable as in the case of a forged attestation, 4 W. 4, c. 66, ss. 5, 9.

*Deeds, Bonds, and False Bail.*—Forging or uttering a deed, bond, receipt, acquittance, or order for delivery of goods, is transportation for life, or seven years, or imprisonment for four or two years. A similar punishment is enacted for fraudulently acknowledging any recognizance, bail, fine, recovery, or judgment, in the name of another.

*Bank of England Paper.*—Knowingly purchasing or receiving, or having in possession without lawful excuse, the proof of which lies on the party accused, forged bank notes ; making or selling *any mould* for making paper with the words “ Bank of England,” or other words in Roman letters visible in the substance, or for making paper with curved or waving wire lines, except paper used for bills of exchange and notes, not in imitation of the watermarks and lines of the bank ; engraving on any plate or material any bank note, or using or having such plate, or uttering or having paper on which a bank note is printed ; engraving on any plate or material any word, number, character, or ornament resembling any part of a bank note, or using or having such plate, or uttering or having any paper on which there is any of the aforesaid impressions,—in all these cases, knowingly committed without lawful excuse, the offender is guilty of felony, punishable with transportation for fourteen years, *id.* ss. 12–16.

*Private Bankers' Paper.*—Making or having in possession any mould or instrument for manufacturing paper with the name of a private banker in the substance ; manufacturing or having such paper, or causing the name to appear in the substance of any paper ; engraving on any plate or material any bill of exchange or promissory note of any private banker, or any words resembling the subscription thereto, or using such plate ; or uttering or having any paper upon which any part of any such bill or note is printed ; in all these cases, knowingly and unlawfully committed, the punishment is transportation for fourteen or not less than seven years, or imprisonment for not exceeding three nor less than one year, ss. 17, 18. A like protection is extended to the bills, notes, and commercial paper of any *foreign State*, or public company recognised by such State, s. 19.

*Register of Marriages, Baptisms, and Burials.*—Knowingly to insert, cause, or permit to be inserted in any register of baptisms, marriages, or burials, any false entry relating thereto; forging, altering, or knowingly uttering any such false entry; wilfully to destroy, cause, or permit to be destroyed or injured, any such register or part thereof; forging, altering, or knowingly uttering any forged licences of marriage,—all these cases are punishable with transportation for life, or any term not less than seven years, or imprisonment not exceeding four nor less than two years. But the officiating minister discovering any error in an entry, he may, in the presence of the parents of the child baptized, or parties married, or of two persons present at the funeral, or of the churchwardens, within one calendar month after, correct it in the *margin*. In the copy of register transmitted to the registrar of the diocese, the *corrections* made by the minister must be certified.

*Stamp Duties and Plate Marks.*—To forge any stamp or die, or expose to sale any vellum or paper impressed with such forgery, or to cut, tear, or get off any stamp, with intent to use the same a *second* time, is punishable with transportation for life, or lesser term, or imprisonment. Offenders are liable to similar punishment for forging any plate, stamp, or die, pertaining to any newspaper or stage-coach licence; or knowingly to use such forgeries. Also to counterfeit any mark or die on any *gold* or *silver plate*, or to sell or transpose any such mark, or knowingly to have such in possession.

*Post Office Licences, &c.*—By 15 & 16 V. c. 87, s. 33, forging the signature of the registrar of lunacy is felony. Forging *franks* on letters, to avoid the payment of postage, or forging the superscription, or date upon the superscription, or writing or sending such letter, knowing such forgery, is punishable with seven years' transportation, 24 G. 3, c. 39; 42 G. 3, c. 63. By 54 G. 3, c. 169, forging Post Office marks, to avoid payment of postage, is punishable as a misdemeanor, by fine and imprisonment. Forging licences granted to hawkers and pedlars is subject to a penalty of £300. Forging any declaration of return of the premium on a policy of insurance is subject to a penalty of £500 for the *first* offence; the *second* is a felony, and subject to transportation for seven years.

## CHAPTER XVI.

### *Theft.*

THEFT, or larceny, which last is the legal term for stealing, is the felonious taking and carrying away of personal property,

with intent to despoil or detriment the owner, lawful possessor, or some other party.

It is sometimes distinguished into simple and compound larceny; simple, when the taking is unaccompanied with aggravating circumstances; compound, when the theft is aggravated by being committed upon the person, or in the dwelling-house. Stealing from the person may amount to robbery, if attended with violence; or, if from the house, to burglary or house-breaking, according as it is perpetrated in the night, or the entry or exit of the offender has been effected by any degree of force.

The punishment of larceny is transportation for a greater or lesser term, or imprisonment; to which last, hard labour, whipping, or solitary confinement, may be added.

Upon a conviction for theft, it is usual to order immediate restitution of such goods as are brought into court, or the party may peaceably retake his goods wherever he happen to find them; or, if the offender be convicted on the evidence of the owner of the goods, and afterwards be pardoned, the owner may bring trover against him, or against any one in whose possession the goods may be found after the conviction. But no action will lie against a man who may have fairly purchased them in *open* market, and sold them before the conviction, notwithstanding the owner gave him notice of the theft while they were in his possession.

Petty stealings may be punished summarily by a single justice of the peace.

Thieves taken in the act may be apprehended without a warrant, by the aggrieved party, or his servant, or any person authorized by him, or by any peace officer, and carried before a magistrate.

Let us return from the punishment and apprehension of the thief to the characteristics of his crime. In the definition of theft given above, it is said the taking must be *felonious*; by which is meant, against the will of the owner, either in his absence or clandestinely, or by force, surprise, fraud, or trick, the owner not voluntarily parting with his entire interest in the property.

In respect to the *carrying away*, there must be a *fraudulent intent* at the time in the offender to convert the property to his own use. In cases where horses or carriages are hired and never returned, if the jury be of opinion, from the circumstances, that the person to whom they are delivered, intended, at the time of the hiring, never to restore them, he is guilty of stealing. But it is not theft if the design of wrongfully appropriating them was conceived and executed *subsequently* to the hiring.

Further, as to the *carrying away* essential to the offence, a bare removal from the place in which the goods are deposited is sufficient. So, if a thief intending to steal plate, take it out of the chest in which it is laid, and lay it down upon the floor, but is surprised before he can make his escape, it is larceny. When a man snatched an ear-ring from a lady's ear, and afterwards dropped it in her hair, it was held a sufficient asportation to constitute a robbery. The removal of a parcel from one end of a wagon to another, with an intent to steal, amounts to a larceny. But where a bale of goods was raised, and placed upon end, this was not thought to be a sufficient carrying away, there not being a complete removal from the place it before occupied.

When a person has *lawfully* obtained possession of goods under a charge of keeping them, he will be guilty of stealing at common law in embezzling them. Thus, if a master deliver property into the hands of a servant for a special purpose, as to leave it at the house of a friend, or to get change, or deposit with a banker, the servant will be guilty of felony in applying it to his own use, 2 *Leach*, 870. And if several persons play together at cards, and deposit money for that purpose, not parting with their property therein, and one sweep it all away and take it to himself, he will be guilty of theft if the jury find that he acted with a felonious design.

It seems doubtful whether extreme necessity is sufficient to negative a felonious intention to appropriate. The inference of a felonious design is not necessarily excluded by the circumstance that property of equal value has been left in exchange; though leaving the *price* of the goods would be presumptive of innocence, 2 *Criminal Law Report*, 17.

The finder of property that has been lost is only trustee for the owner, and his *lawful* possession of it is determined by breaking a parcel, or opening a box, with intent to embezzle part or the whole of the contents. But though the *breaking of bulk* is by a strained legal inference deemed theft, the implied trust would not be determined by purloining or disposing of the whole package.

Theft is distinguishable from a mere trespass by the intent to despoil, and fraudulently appropriate another man's goods.

It is distinguishable from the offences of obtaining by false pretence, extortion by threat, deceit and embezzlement, by the circumstance, that a taking and wrongful removal, in the first instance, are essential to the offence.

It is also distinguishable from the offences of obtaining by false pretence, deceit, and extortion by threat, by the circumstance, that (except in the case of robbery) the taking does not constitute theft, where the owner intends to transfer the right of property. For instance, whatever may have been the intent

of a purchaser who has bought goods on *credit*, the conversion of such goods to his own use will not amount to larceny, however gross the fraud may be, the seller having parted with the possession of his property on the credit of the buyer in the way of sale. But if a cheat is practised, as to whom the goods shall be delivered, and the party thereby contrives to get the goods into his possession, or where it appears from circumstances that the owner has not voluntarily parted with his property, the transaction may be theft.

Theft cannot be committed by one who is either the sole, or a joint, or part owner of the thing taken. To this rule, however, there is an exception; as in the case of a man purloining the goods he has entrusted with a carrier or servant, with intent to defraud the latter, or the hundred, by charging either with the value of the property the owner himself has abstracted, 4 *Criminal Law Report*, 65.

Neither can a wife be charged with theft in taking the goods of the husband; nor is a stranger guilty in receiving them from the wife, unless he has committed adultery with her, 1 *Russ. on Crimes*, 27.

Every chattel which is the subject of theft is presumed to have an owner, though such owner cannot always be ascertained. The ownership of some particular descriptions of property is as follows: of grave-clothes, in the personal representatives of the deceased; children's clothes either in the parents or the children, according to circumstances and the general rules regarding property; of the church or chapel in vacation, in the church; and of an intestate before administration granted, in the ordinary.

Theft can be committed of such things only as are of some intrinsic value; but it may be committed of things valuable to the owner, though not of value to any one else, nor saleable.

Theft cannot be committed of animals that are wild by nature and at large, as deer in a chase or forest, hares, rabbits in a warren, or wild fowl, rooks for instance; but deer in an inclosure, fish in a tank, or pheasants in a mew, as well as swans marked, and all valuable domestic animals, are subjects of larceny. Dogs, birds, pigeons not inclosed, and other animals kept for pleasure, not being subjects of larceny, are protected by summary proceedings before justices, and will fall under the head of Game Laws.

A human body, living or dead, is not the subject of theft. The stealing of children, however, is, in certain cases, made felony (p. 520).

We shall now enumerate the several species of theft and their punishments. Robbery, which is theft aggravated by violence to the person, will form the subject of the next chapter.



## STEALING IN A DWELLING-HOUSE.

By 1 V. c. 86, s. 5, the stealing any *property* in a dwelling-house, with menace or threat, by which any one therein is put in bodily fear, is felony, subject to transportation for not exceeding fifteen nor less than ten years, or imprisonment for not exceeding three years.

By property is defined any "chattel, money, or valuable security."

Simply stealing in a dwelling-house without violence is punishable with transportation for seven years, or imprisonment: but stealing in a dwelling-house to the value of £5 or more, subjects to transportation for not exceeding fifteen nor less than ten years, or imprisonment for not exceeding three years, with or without hard labour or solitary confinement.

*Breaking, entering, and stealing* in any building within the curtilage of a dwelling-house, subjects to the same punishment, 7 & 8 G. 4, c. 29; 1 V. c. 90.

*Definition.*—The legal meaning of the terms *breaking and entering*, in housebreaking and stealing, differs from the popular signification of the words. It is not necessary that force or violence in the popular sense should be used. The *breaking* is complete by merely drawing a latch, or opening a window and putting in a hand; or if any offender crawl down the chimney, or fraudulently induce a domestic servant to admit him into the house; or procure admission by a fraudulent ejection, or false pretence of taking lodgings: each would be a breaking in law. For an *entry*, it is enough without the employment of force in the ordinary meaning, merely to insert an instrument through the window or over the threshold.

## STEALING IN A SHOP, ETC.

Breaking, entering, and stealing in any shop, counting-house, or warehouse, subjects to transportation for not exceeding fifteen nor less than ten years, or to imprisonment for not exceeding three years, with or without hard labour or solitary confinement, 7 & 8 G. 4, and 1 V. c. 90.

## STEALING BY TENANTS OR LODGERS.

If a person steal any *chattel* or *fixture* let to him to be used with any house or lodging, he is subject to transportation for seven years, or imprisonment for not exceeding two years, with or without solitary confinement or hard labour; and, if a male, once, twice, or thrice public or private whipping may be added, 7 & 8 G. 4, c. 29, ss. 3, 4, and 5; 1 V. c. 90, s. 5.

In this offence it is immaterial whether the *letting* of the house or lodging be to the husband or wife, or to some person authorized by them.

#### STEALING IN A CHURCH OR CHAPEL.

Breaking and entering any church or chapel, and stealing therein any chattel; or having stolen any chattel in any church or chapel, breaking out of the same; or ordering, counselling, or procuring the commission of such offences, subjects to transportation for life, or not less than seven years, or imprisonment not exceeding three years, with or without hard labour or solitary confinement, 1 V. c. 90, s. 5.

#### STEALING FROM LITERARY OR SCIENTIFIC INSTITUTIONS.

Institutions of this class, and for the fine arts, established under 17 & 18 V. c. 112, are protected, and any member of such institutions who shall steal, purloin, or embezzle the money, securities, goods and chattels, or wilfully and maliciously destroy or injure them, or shall forge any deed, bond, security, receipt, or other instrument pertaining to such institutions, is made criminally liable, as a stranger would be for the commission of any of the specified offences.

#### STEALING BY CLERKS AND SERVANTS.

If a clerk or servant steal any chattel, money, or *valuable security*, belonging to or in the possession or power of his master, every such offender shall be liable to be transported for any term not exceeding fourteen years, nor less than seven years, or imprisoned, with or without whipping, three years.

If a person steal any *tally, order, or other security*, entitling or evidencing the title to any share or interest in a public stock or fund, whether of this kingdom or a foreign State, or in a fund of any body corporate, company or society, or to any deposit in any savings bank; or steal a debenture, deed, bond, bill, note, warrant, order, or other security for money, or for payment of money; or steal a warrant or order for the *delivery or transfer of goods* or valuable thing: every such offender is guilty of felony of the same nature, and punishable in the same manner, as if he had stolen any chattel or goods of the like value with that represented or evidenced in any of the foregoing instruments, 7 & 8 C. 4, c. 29, s. 5.

#### STEALING GOODS IN PROCESS OF MANUFACTURE, ETC.

If a person steal to the value of 10s. any goods, or article of

silk, woollen, linen, or cotton, or of any two or more of these materials mixed with each other, or mixed with any other material, whilst exposed during the process of manufacture, in any *building, field, or other place*, such offender shall be liable to be transported for any term not exceeding fifteen nor less than ten years, or imprisoned, with or without hard labour or solitary confinement, for not exceeding three years, 7 & 8 G. 4, c. 29, ss. 4 & 16; 1 V. c. 90, ss. 2 & 3.

A like punishment for stealing any goods or merchandize in any *vessel, barge, or boat* of any description whatever, in any port of entry or discharge, or upon any navigable river, canal, or creek communicating therewith; or stealing from any dock, wharf, or key adjacent thereto.

So also the punishment is the same if a person plunder or steal any part of a ship or vessel which is in distress, wrecked, stranded, or cast on shore, or any goods or articles belonging thereto. But when articles of *small value* are stranded, or cast on shore, and stolen without circumstances of cruelty, outrage, or violence, the offender may be prosecuted for simple larceny.

Persons in possession of shipwrecked goods may be apprehended, and not giving a satisfactory account how they came in possession of them, the justice may order them to be delivered to the owner; and the offender, over and above the value of the goods, to forfeit any sum not exceeding £20.

Persons offering shipwrecked goods for sale may be seized by the person to whom they are offered, or by any officer of the customs or excise, or peace officer, and may be dealt with in the same manner as last mentioned, 7 & 8 G. 4, c. 29, ss. 18, 19, 20.

#### STEALING CATTLE.

If a person steal any horse, mare, gelding, colt, or filly; or any bull, cow, ox, heifer, or calf; or any ram, ewe, sheep, or lamb; or wilfully kill any such cattle, with intent to steal the carcass, or skin, or any part of the cattle so killed; or counsel, aid, or assist in the commission of such offence: he is subject to transportation for not exceeding fifteen nor less than ten years, or to imprisonment, with or without hard labour or solitary confinement, for not exceeding three years, 7 & 8 G. 4, c. 29; 2 & 3 W. 4, c. 62; 3 & 4 W. 4, c. 44, s. 3; 1 V. c. 90.

By an act of 1849, the 12 & 13 V. c. 30, if in Ireland a person be suspected, on the oath of one witness, to have in his possession, without lawful excuse, any *mutton, fat, skin, or fleece* of a stolen sheep, his house, outhouse, or other place may be searched, and if any such be found he may be apprehended, and, on conviction at the next petty sessions, is subject to a fine of £5, or, on non-payment, to imprisonment, with or without hard

labour, for three calendar months. By s. 2, the justices before whom the suspected is brought, may, if they think fit, decline to adjudicate the case in a summary way, and send the prisoner to the assizes or quarter sessions to be tried for a felony.

## STEALING OF DOGS.

By 8 & 9 V. c. 47, the stealing of a dog is a misdemeanor, and any person convicted of such offence before two or more justices shall, for the first offence, be imprisoned, with or without hard labour, for any term not exceeding six calendar months, or shall forfeit above the value of the dog any sum not exceeding £20; for a *second* offence of dog-stealing, the offender may be punished by fine or imprisonment, with or without hard labour, or by both, provided the imprisonment do not exceed eighteen months.

Persons in whose possession a stolen dog is found, or the skin of a stolen dog, and convicted before a justice of a guilty knowledge that such dog had been stolen, are liable to a penalty of £20; or for a second offence are punishable for a misdemeanor; the dog to be restored by order of the justice. Compounding for offences under the act subjects to a penalty of £25, with costs, to any person who will sue.

Any person found committing the offence of dog-stealing may be apprehended without a warrant; or, on oath, a warrant may be granted for searching suspected premises; or a person to whom a stolen dog is offered for sale may apprehend the offender, and convey him and the dog before a justice. It is a misdemeanor to receive money for the restoration of a stolen dog.

## STEALING BEASTS OR BIRDS.

By 7 & 8 G. 4, c. 29, if a person steal any beast or bird *ordinarily kept in a state of confinement*, not being the subject of larceny at common law, every such offender, being convicted before a justice of the peace, shall, for the *first* offence, forfeit and pay, over and above the value of the beast or bird, such sum of money, not exceeding £20, as to the justice shall seem meet: and if a person so convicted shall be guilty a *second* time, he shall be committed to the common gaol, or house of correction, there to be kept to hard labour, for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction.

By the 32nd section, the punishment is the same if persons *have in their possession* any beast, or the skin thereof; or any bird, or the plumage thereof, knowing it to have been stolen.

Persons unlawfully killing, wounding, or taking any HOUSE-DOVE OR PIGEON, under such circumstances as do not amount to larceny at common law, shall forfeit, over and above the value of the bird, any sum not exceeding £2, s. 33.

The offences of stealing deer, hares, and coney, will be included in the subsequent chapter on the *Game Laws*.

#### STEALING OR DESTROYING FISH.

By 7 & 8 G. 4, c. 29, s. 34, if a person unlawfully and wilfully take and destroy any fish in any water which shall run through, or be in *any land belonging to the dwelling-house* of any person being the owner of such water, or having a right of fishery therein, every such offender shall be guilty of a misdemeanor; and if any person take or destroy, or attempt to take or destroy, any fish in any water not being such as aforesaid, but which shall be *private property*, or in which there shall be any private right of fishery, every such offender shall forfeit, over and above the value of the fish, such sum of money, not exceeding £5, as to the convicting justice shall seem meet. Nothing in this clause extends to persons *angling in the day-time*; but persons angling in the day-time, in water of the first description, are made subject to a penalty of £5; or in water of the second description, to a penalty of £2.

Persons found ANGLING against the provisions of this act, the owner of the ground, water, or fishery, or his servant, may demand the fishing implements of the offender; and if he refuse to deliver them, they may be seized for the use of the owner of the ground: but persons whose implements are so seized, are excused from the payment of any penalty or damage.

#### STEALING FROM OYSTER BEDS.

If any person steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, every such offender shall be deemed guilty of larceny; and if any person shall unlawfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any such oyster fishery, for the purpose of taking oysters or oyster brood, although none shall be actually taken; or shall, with any net, instrument, or engine, drag upon the ground or soil of any such fishery,—every such person shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both; such fine not to exceed

£20, and such imprisonment not to exceed three calendar months: but nothing shall prevent any person from catching or fishing for any *floating fish* within the limits of any oyster-fishery, with any net, instrument, or engine adapted for taking floating fish only, s. 36.

## STEALING FIXTURES OR FROM MINES.

If a person steal, or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese or mundick, or any wad, black cawke, or black leap, or any coal or cannel coal, from any mine, bed, or vein, such offender is punishable with transportation for seven years, or imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, 7 & 8 G. 4, c. 29; 1 V. c. 90.

A like punishment if a person steal, or rip, cut, or break, with intent to steal, any glass or woodwork, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, made of any other material, belonging to, or fixed to, any building, or any thing made of metal, fixed in any land, being private property, or for a fence to any dwelling-house, garden or area, or in any square, street, or other place dedicated to public use or ornament.

## STEALING TREES OR SHRUBS.

If a person steal, cut, break, root up, or otherwise destroy or damage, with intent to steal, any tree, sapling, shrub, or under-wood growing in any *park, pleasure-ground, garden, orchard, or avenue, or in any ground belonging to any dwelling-house*; every such offender, in case the value of the article stolen, or injury done, amount to £1, is punishable with transportation for seven, or imprisonment, with or without whipping, for not exceeding two years; or in case the article be growing *in any other situation* than those mentioned, and exceed the value of £5, the offender shall be liable to the same punishment.

Stealing, &c., any of the last-mentioned articles, *wheresoever growing*, above the value of ONE SHILLING, the offender shall, over and above the value of the article or amount of injury done, forfeit, for the *first offence*, not exceeding £5; for a *second*, be committed to hard labour to the house of correction, for any time not exceeding twelve calendar months, and once or twice public or private whipping may be inflicted, if the conviction be before two magistrates; for a *third offence*, the offender is punishable with transportation for seven years, or imprisonment, 7 & 8 G. 4, c. 29; 1 V. c. 90, ss. 38, 39.

## STEALING FENCE, STILE, OR GATE.

If a person steal, cut, break, or throw down, with intent to steal, any part of a live or dead fence, or any wooden post, pale, or rail, used as a fence, or any stile or gate; the offender shall, for a *first* offence, over and above the value of the article, forfeit any sum not exceeding £5; and for a *second* offence, be committed to hard labour for not exceeding twelve calendar months; and if the second conviction be before two magistrates, once or twice public or private whipping may be inflicted, 7 & 8 G. 4, c. 29, s. 40.

If the whole or part of a tree, sapling, or shrub; or any live or dead fence, post, pale, rail, stile, or gate, of the value of 2s., *be found in the possession* of any person, or on his premises, with his knowledge, and such person is unable to satisfy a justice that he came lawfully by the same, he may, over and above the value of the article, be convicted in the forfeiture of any sum not exceeding £2, s. 41.

## STEALING FROM GARDENS OR ORCHARDS.

If a person steal, destroy, or damage with intent to steal, any plant, root, fruit, or vegetable production, growing in any *garden, orchard, nursery ground, hothouse, greenhouse, or conservatory*, every such offender shall, at the discretion of the justice, either be committed to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six calendar months, or else pay, over and above the value of the article stolen, or the amount of the injury done, any sum not exceeding £20. On a *second* conviction, the offender may be transported for seven years, or imprisoned, with or without whipping, not exceeding two years, 7 & 8 G. 4, c. 29, s. 42.

If a person steal, destroy, or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, distilling or dyeing in any manufacture, and growing in any *land, open or inclosed, not being a garden, orchard, or nursery ground*, every such offender may be committed, either with or without hard labour, for not exceeding one calendar month, or, over and above the value of the article stolen or injured, shall pay not exceeding 20s. On a *second* conviction, the offender may be imprisoned six months, with or without whipping, s. 43.

## STEALING FROM GRAVES.

It has been before observed, that no law renders stealing or taking a dead body a theft. Unless there be some property in

the thing taken, and an owner, no theft can be committed ; yet if the owner be unknown, provided there be a property, it is larceny to steal it. This is the case of stealing a shroud out of a grave, which is the property of those who buried the deceased ; but stealing the body itself, which has no owner, is no felony, unless some of the grave-clothes be taken. But it is an offence, *not to bury a dead body* ; and, in *Rex v. Young*, the master of a workhouse and a surgeon were convicted of a conspiracy to prevent the burial of a person who died in the workhouse. And in *Rex v. Cundick*, the defendant was found guilty of a misdemeanor for not having buried the body of an executed felon, entrusted to him by the gaoler for that purpose, *Surrey Spring Assizes*, 1822. The possession of a body for the purpose of dissection by a licensed anatomist is rendered lawful by 2 & 3 W. 4, c. 75.

The punishment for stealing *Wills, Records, Titles, Deeds*, and *Heiresses*, have been before stated under their respective heads.

## CHAPTER XVII.

### *Robbery.*

THE crime of robbery is a species of theft, aggravated by the circumstance of a taking of the property from the person, or whilst it is under the protection of the person, by means either of violence or putting in fear.

Formerly the offence seems to have been confined to cases of *actual* violence to the person ; but, in latter times, it has been extended to constructive violence by putting in fear, and not only to cases where property has been taken and delivered under the threat of bodily violence to the party robbed, or some other person, but also where the fear has resulted from the apprehension of violence to the habitation or property, or has been occasioned by threat of preferring a charge of an infamous crime.

To constitute robbery, there must be a *forcible* taking, but any the least degree of force which inspires fear is sufficient. The value of the article taken is immaterial ; a penny, as much as a pound, forcibly extorted, makes a robbery.

It must be a taking from the *person*, as a horse whereon a man is riding, or money out of his pocket ; or else *openly* and before his face, as if a thief, having first assaulted me, takes away my horse that is standing by me, or, having put me in fear, drives away my cattle.

*Actual* violence to the person, or exciting fear in the mind, is



not always necessary to constitute a robbery. For, if a man, with cutlass under his arm, or pistol, demand and obtain the money of another without touching the person, it is robbery, though there is no consciousness of fear in the party robbed, only in apprehension or expectation that violence will be resorted to if the robber be refused or resisted.

A snatching or taking of property suddenly or unawares from the person, without some actual injury to the person, is not a sufficient degree of violence to constitute robbery.

If violence be used it is sufficient to constitute robbery, although it be used under the colour of executing legal process, or other lawful authority.

Having endeavoured shortly to describe the nature of robbery, we come next to the law by which the offence is punished. This is provided for by 1 V. c. 87, which repeals and makes some important changes in former statutes, distinguishing more minutely the various shades of the crime, and apportioning the punishment according to the degrees of violence or terror with which it is perpetrated.

Thus, whoever shall rob any person, and at the time, or immediately *before* or *after*, shall stab, cut, or wound such person, is guilty of felony, punishable with death, s. 2.

Whoever shall, being *armed with any offensive weapon or instrument*, rob, or assault with intent to rob, any person, or shall, together with one or more, rob, or assault with intent to rob, any person, or shall rob any person, and at the time of, or immediately *before* or *after*, such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and be liable, at the discretion of the court, to be transported for life, or for not less than fifteen years, or to be imprisoned for not exceeding three years, s. 3.

By the same statute the punishment for obtaining property by the threat of accusing of an *unnatural crime*, shall be felony, and transportation for life, or for not less than fifteen years, or imprisonment for not exceeding three years, s. 4.

The punishment of a simple robbery, or of merely stealing from the person, transportation for not exceeding fifteen nor less than ten years, or imprisonment for not more than three years, s. 5.

Lastly, sections 6 & 7 provide for cases where the unlawful purpose is not carried into complete effect, and the attempt not attended by violence or other aggravating circumstance, by enacting, that whoever assaults with intent to rob, or with menace or force demands property, with intent to steal, is guilty of felony, and liable to imprisonment for not exceeding three years.

What length of time shall be sufficient to satisfy the words

"immediately *before or after*," in the second and third sections of the statute, is doubtless left an open question for the determination of the judges.

## CHAPTER XVIII.

### *Malicious Injuries to Property.*

THIS class of offences is characterized by malice as contradistinguished from fraud. They consist of injuries done to public or private property, not for the purpose of theft, but from wantonness or ill-will, or mischievous design to violate the law. It is not necessary, however, that *malice* should appear, that is presumed from the injury inflicted; and it lies on the party indicted to rebut the presumption of evil intention, or sufficiently explain the act of which he is accused. As the crime is one that is often hard to prevent or discover, it is, although in general only a trespass at common law, made by recent statutes highly penal, and the punishment proportioned to the magnitude of the damage caused, and the difficulty, from the peculiar nature of the property, its unavoidable exposure or otherwise, of guarding against the perpetration of the injury.

The following is an enumeration of malicious injuries and their punishments, as provided for by 7 & 8 G. 4, c. 30, amended and extended by 1 V. c. 89, 1 V. c. 90, and 8 & 9 V. c. 44.

*Public Museums and Works of Art.*—The 8 & 9 V. c. 44, was passed for the protection of works of art and scientific and literary collections, and enacts that every person who shall unlawfully and maliciously destroy or damage anything kept for the purpose of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other repository, which is either at all times or from time to time open for the admission of the public, or of any considerable number of persons, to view the same, either by permission of the proprietor or by the payment of money before entering the same, or any picture, statue, monument, or painted glass in any church or chapel or other place of religious worship, or any statue or monument exposed to public view, shall be guilty of a misdemeanor, and liable to be imprisoned for any period not exceeding six months, and, if a male, may during the period of such imprisonment be put to hard labour, or be once, twice, or thrice privately whipped, in such manner as the court shall direct. In every offence against this act, malice shall be implied; any person found committing an offence may be apprehended without a warrant, and forthwith taken before a justice of the peace; but

no proceedings to affect the right of any person to recover damages: accessories are to be punished as principals. The act does not extend to Scotland.

*Care of Public Statues.*—By 17 & 18 V. c. 33, certain public statues enumerated in the act are placed under the control of her majesty's Commissioners of Works. Commissioners may erect statues out of moneys appropriated to the purpose by parliament, and may also repair and fence off statues already erected. No public statue hereafter to be erected without the consent of the commissioners. Persons damaging any public statue, or the ornaments or fences thereof, punishable for a misdemeanor, as provided by 8 & 9 V. c. 44. Owners of statues not mentioned in the schedule may transfer them to the commissioners with the consent of the Treasury, s. 7.

*Injuries or Cruelty to Animals.*—If any person unlawfully and maliciously kill, maim, or wound any *cattle*, he is punishable with transportation for not exceeding fifteen nor less than ten years, or with imprisonment for not exceeding three years, 7 & 8 G. 4, c. 30, s. 16; 1 V. c. 90. In the 9 G. 1, c. 22, which the 7 & 8 G. 4 superseded, the word "*cattle*" included horses, mares, colts, asses, and pigs.

By 12 & 13 V. c. 92, s. 2, if any person cruelly beat, ill-treat, over-drive, abuse or torture, or cause to be so ill-treated, any animal, every such offender, for every such offence, shall forfeit not exceeding £5. Any person who shall keep or use or act in the management of any place for the purpose of *fighting* or *baiting* any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature, is liable to a penalty not exceeding £5 for every day; as also any person who suffers any place to be so kept or used. Persons by ill-treating animals, occasioning injury to them or to any other persons or property, must compensate to any amount a justice shall think fit, not exceeding £10, s. 4. Cattle *impounded* must be supplied with a sufficient quantity of fit and wholesome food and water, under a penalty of 20s.—See *Slaughtering Houses*, in DICTIONARY. The use of dog-carts within the limits of the metropolis is prohibited by 2 & 3 V. c. 47.

For removing certain doubts on the above acts, the 17 & 18 V. c. 60, enacts that all persons who have impounded animals, or may do so hereafter, and have provided food for them, are entitled to recover their expenses, and are empowered to sell animals after being impounded seven days. The provision of 2 & 3 V. c. 47, prohibiting the use of dog-carts in the metropolis, is extended to all parts of the United Kingdom.

*Damaging Manufactures or Machinery.*—Unlawfully and maliciously to cut or damage any article containing *silk*, *woollen*, *linen*, or *cotton*; or any framework-knitted piece, stocking, hose,

or lace, being in the *process of manufacture*; or any loom, frame, machine, engine, rack, tackle, or implement, employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing such goods or articles; or by force enter any house, shop, building, or place, with intent to commit any of these offences; subjects to transportation for not less than seven years, or to imprisonment, with or without whipping, for not exceeding four years, 7 & 8 G. 4, c. 30, s. 3.

Destroying *threshing, or any other machinery than of the description last mentioned*, subjects the offender to transportation for seven years, or imprisonment, with or without whipping, for two years, s. 4.

*Damaging Buildings, Mine, or Shaft.*—By 9 & 10 V. c. 25, s. 7, maliciously to attempt to set fire to any building, vessel, mine, stack, or steer, or to any vegetable produce of such kind, subjects to transportation for not exceeding fifteen years, or imprisonment not exceeding two years.

By 1 V. c. 89, s. 9, persons maliciously *setting fire* to any mine of coal, are subject to transportation for life, or not less than fifteen years, or to imprisonment, with or without hard labour, or solitary confinement, for not exceeding three years, 1 V. c. 89, s. 9.

If a person cause water to be conveyed into a mine, or into a passage communicating therewith, with intent to destroy or damage such mine, or to hinder the working; or, with the like intent, pull down or obstruct any airway, waterway, drain, pit, level, or shaft, belonging to a mine; the offender is liable to be transported for seven years, or imprisoned, with or without whipping, for two years. But this does not apply to damage unavoidably committed in working any neighbouring mine, s. 6.

The offender is subject to a like punishment in destroying any steam or other engine for sinking, draining, or working a mine; or any staith, building, or erection, used in conducting the business of a mine, or a bridge, waggon-way, or trunk, for conveying minerals, whether such engine or work be completed or in an unfinished state.

*Setting Fire to Ships.*—If a person set fire to, or in anywise destroy any ship or vessel, whether the same be complete, or in an unfinished state; or set fire to, cast away, or in anywise destroy any ship or vessel, with *intent to prejudice the owner or underwriter*, or injure any goods on board the same, the offence is felony, subject to transportation for life, or not less than fifteen years, or to imprisonment not exceeding three years, 1 V. c. 89, s. 6.

Impeding any person endeavouring to escape from shipwreck subjects to the same punishment, s. 7.

Hanging out false lights, to cause the shipwreck of any vessel, is punishable with death, s. 5.

Damaging a ship or vessel, *otherwise than by fire*, subjects the offender to transportation for seven years, or imprisonment, with or without whipping, for two years.

*Sea-banks and Canal Works*.—If a person break down any sea-bank, or the bank of any river, canal, or marsh, whereby lands are overflowed, damaged, or endangered; or destroy any lock, sluice, flood-gate, or other work on any navigable river or canal; every such offender shall be guilty of felony, subject to transportation for life, or not less than seven years, or to imprisonment, with or without whipping, for not exceeding four years.

If a person remove any pile, chalk, or other material, used for securing any sea-bank, or the bank of any river, canal, or marsh, or open any flood-gate, or do any injury to a navigable river or canal, with intent to obstruct the carrying-on, completing, or maintaining the navigation; every such offender shall be liable to transportation for seven years, or imprisonment, with or without whipping, for not exceeding two years, 7 & 8 G. 4, c. 30, s. 12.

Persons destroying or injuring any PUBLIC BRIDGE, so as to render it dangerous or impassable, are subject to transportation for life, or not less than seven years, or to imprisonment, with or without whipping, for not more than four years, s. 13.

*Turnpike-gate or Toll house*.—If a person destroy or injure any turnpike-gate, or any wall, chain, rail, post, bar, or fence, or any house, or weighing-engine connected therewith, he is guilty of a misdemeanor, punishable with transportation, fine or imprisonment, or both, s. 14.

*Fish-pond or Mill-dam*.—To destroy the dam of any fish-pond, or any water which is private property, or in which there is any private right of fishery, *with intent to destroy the fish*; or to put any lime or other noxious material in any pond or water, with similar intent; or to destroy the dam of any MILL-POND, subjects the offender to transportation for seven years, or to imprisonment, with or without whipping, for two years, s. 15.

*Burning or destroying Agricultural Produce*.—By 1 V. c. 89, s. 10, if a person maliciously set fire to any stack of *corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, wood, or steer of wood*, he is punishable with transportation for life, or not less than fifteen years, or imprisonment not exceeding three years.

The 7 & 8 V. c. 62, passed to amend the preceding, and better to protect farm produce and buildings, enacts that setting fire wilfully and maliciously to any farm-building, or to any hay, straw, wood, or other vegetable production in any farm-house or

farm-building, renders the offender liable to transportation for life, or for not less than fifteen years, or to imprisonment for not more than three years; if the offender be a male under eighteen, he may be whipped, in addition to any other sentence.

Maliciously cutting or destroying *hop-binds*, grown on poles in any plantation of hops, subjects to transportation for fifteen or not less than ten years; or to imprisonment for not exceeding three years, 1 V. c. 90, s. 2.

*Destroying Trees or Shrubs.*—If a person maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, shrub, or underwood, growing in any *park, pleasure ground, garden, orchard, or avenue, or in any ground belonging to any dwelling-house*; every such offender, in case the amount of the injury done exceed the sum of £1, shall be guilty of felony, subject to transportation for seven years, or to imprisonment, with or without whipping, for two years. Persons are made liable to the same punishment, who injure, in like manner, any tree, shrub, &c., growing in *any other situation* than that described, and above the value of £5, 7 & 8 G. 4, c. 30, s. 19.

If a person injure, in like manner, any tree, sapling, shrub, or underwood, *wheresoever growing*, the injury being done to the amount of ONE SHILLING, he shall, on conviction before a justice of the peace, for the *first* offence, pay, over and above the amount of the damage for the injury done, any sum not exceeding £5; for a *second* offence, be committed to hard labour for not exceeding twelve calendar months; and if such second conviction be before two justices, they may order the offender to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction; for a *third* offence, the offender may be transported for seven years, or imprisoned, with or without whipping, for two years, s. 20.

*Destroying Fruit or Vegetables.* Persons maliciously destroying or injuring any plant, root, fruit, or vegetable production, in any *garden, orchard, nursery ground, hothouse, greenhouse, or conservatory*, may, on conviction before a justice of peace, be imprisoned, with or without hard labour, for any term not exceeding six calendar months, or else pay, over and above the amount of the injury done, any sum not exceeding £20; for a *second* conviction, it is felony, subject to transportation for seven or imprisonment for two years, s. 21.

If any person destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, distilling, or dyeing; or for or in the course of any manufacture, and growing in *any land, open or inclosed, not being a garden, orchard, or nursery ground*; every such offender, being convicted before a justice of the peace, shall be committed, with or without hard labour, for not exceeding one calendar

month, or else pay, over and above the amount of the injury done, any sum not exceeding 20s. Persons convicted a *second* time may be imprisoned, with or without hard labour, for not exceeding six calendar months; and if the second conviction be before two magistrates, public or private whipping may be ordered, s. 22.

*Destroying Wall, Fence, or Gate.*—Persons maliciously destroying or damaging any fence, wall, stile, or gate, shall, for a *first* offence, pay, over and above the amount of the injury done, any sum not exceeding £5; for a *second* offence, be committed to hard labour for any term not exceeding twelve calendar months; and, if such subsequent conviction take place before two justices, once or twice public or private whipping may be added, s. 23.

*Malicious Injuries of any other Description.*—The 7 & 8 G. 4, c. 30, s. 24, concludes with a general provision, by enacting that if any person wilfully or maliciously commit any damage, injury, or spoil, to or upon *any real or personal property*, either of a public or private nature, for which no punishment is provided, every such person shall pay such sum of money as shall appear to the justice to be a reasonable compensation for the injury done, not *exceeding the sum of five pounds*; and, on default of payment, together with costs, the offender may be committed, with or without hard labour, for not exceeding two calendar months. But this provision does not apply where the party trespassing acted under a reasonable supposition that he had a right to do the act complained of; nor to any trespass, not being wilful or malicious, committed in hunting, fishing, or in the pursuit of game.

## CHAPTER XIX.

### *Game Laws.*

GAME is still deemed of sufficient importance to be subject to special legislation, different from property, or of other animals either wild or domesticated; and is defined to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. Before giving an analysis of the Game Act, the 1 & 2 W. 4, c. 32, for improving the law on this subject, and which repealed former enactments from 13 R. 2, to 59 G. 3, it will be useful to notice the more important alterations that statute introduced, and by which almost the last remnant of the forest laws, which had long formed a topic of popular animadversion, has been yielded up to the advancing spirit of the age.

First, no *qualification* of rank or property is required; every person who has obtained a game certificate is authorized to kill game on his own land, or on that of another person, with the leave of the person entitled to the game, subject to the ordinary prosecutions for trespass, to which *qualified* persons were liable, before the passing of the act.

Game is made *saleable* by taking out an annual licence.

The lord of the manor is not restricted to the appointment *one* gamekeeper, as formerly, but may appoint several for the same manor.

Prior to this act, the occupier of land, if qualified, might sport over his grounds, and give permission to others to do the same, unless the right to kill game had been reserved to the landlord; but these immunities are now transferred to the landlord, except in cases which will be subsequently mentioned.

The penalties imposed for offences are recoverable on a summary conviction before *two* justices, except in the case of trespass, in which, with a view to the more speedy liberation of the party arrested, the power of conviction is given to a single magistrate.

An appeal to the quarter sessions is allowed against all convictions, but no certiorari. Under the old acts, the power of conviction was given to a *single* justice without any appeal, and no certiorari allowed for removing the proceedings under any of the leading acts, except upon onerous conditions.

We shall next proceed to give a digest of the Game Act, and also of other acts relative to game certificates, and for the preservation of deer and coney, and the prevention of night poaching, which, though not included in the act, have been always considered to form part of the Game Code. The word "game" will be used in the sense defined above by the statute, which does not include snipes, woodcocks, quails, landrails, coney, &c.; though these are subject by the Certificate Act to legal regulation, as to the season of sporting. The following will be the order of our subjects:—

1. *Seasons and Days of Sporting.*
2. *Game Certificate.*
3. *Penalties on Uncertificated Persons.*
4. *Trespasses in Pursuit of Game.*
5. *Seizing Game on the Person.*
6. *Deers, Hares, Coney, and Pigeons.*
7. *Destroying Eggs of Game.*
8. *Poaching in the Night.*
9. *Rights of Landlords and Tenants.*
10. *Powers and Duties of Gamekeepers.*
11. *Licences to sell Game.*
12. *Privileges of Forests, Chases, Warrens, and Parks.*



## I. SEASONS FOR KILLING GAME.

Any person that shall kill or take game, or use any dog, gun, net, or other engine for these purposes, on a Sunday or Christmas Day, shall, on conviction before two justices, forfeit not exceeding £5, with costs: any person killing or taking any *partridge*, from the 1st of February to the 1st of September; or *pheasant*, from the 1st of February to the 1st of October; or *black game*, between the 10th of December and 12th of August (or the 1st of September, in the counties of Somerset and Devon and the New Forest); or *grouse* between the 10th of December and the 12th of August; or *bustard*, between the 1st of March and the 1st of September, shall, on conviction before two justices, forfeit for every head of game not exceeding 20s. with costs. Any person laying *poison* with intent to destroy game, to forfeit not exceeding £10, 1 & 2 W. 4, c. 32, s. 3.

Any licensed dealer buying, or selling, or having in his possession, any *bird of game*, ten days after the expiration of the season; or any person, not licensed to deal in game, buying or selling within such days, or having in his possession, any bird of game, (except in a mew or breeding place,) after forty days, shall, on conviction, forfeit for every head of game not exceeding 20s. with costs, s. 4.

As "bird of game," not *hares*, is mentioned, it can be no offence in any licensed dealer to buy, sell, or have in possession hares at *any time*; and no offence in any unlicensed person to buy of a licensed dealer, or have in possession, hares at any time.

Though hares are included in the definition of "game," no time is fixed within which they ought not to be killed; neither is there any limitation as to the time when coney or wild fowl may be killed. But till lately an indirect penalty was inflicted under the operation of the Certificate Act. To sport without a certificate, is by that act an offence punishable by a fine of £20, and £3 13s. 6d., the amount of the certificate duty; and, in default of payment, six months' imprisonment. The certificates are not granted before July, and till the recent alteration (see next page) remained in force only to the 5th of April following. Any person, therefore, sporting between the 5th of April and the time at which the certificates were granted, was, in fact, sporting without a certificate, and, consequently, liable to the attached penalties.

## II. GAME CERTIFICATE.

Although the Game Act abolished qualifications to kill game, it made no alteration in the law relative to certificates; and for

any person to be entitled to kill game during the sporting season, it is necessary he should obtain a certificate from the clerk of the peace of the county or district where he resides, otherwise he will be liable, under 52 G. 3, c. 93, s. 12, to a penalty of £20, over and above the full duty of £3 13s. 6d.

To take or kill in any part of Britain, any shipe, quail, land-rail, woodcock, or rabbit, a certificate is necessary; except to take woodcocks and snipes with nets or springes, or rabbits, by the proprietor, in an inclosed ground, or by the tenant and his servant. Collectors of taxes, gamekeepers, landlords, occupiers, and lessees of grounds, are empowered to demand the certificate of sportsmen, which they may read or take a copy of. In case no certificate is produced, the person demanding it may require such person to declare his name, residence, and place where he took out his certificate; and, provided he refuse to show his certificate, or give a false certificate, or false name, residence, or place of assessment, such person shall forfeit £20.

Every certificated person is subject to the law of trespass in the pursuit of game on another's ground; but no gamekeeper's certificate, for which a less duty than £3 13s. 6d. is paid, protects him beyond the *limits* included in his appointment as gamekeeper, s. 6.

By 7 & 8 G. 4, c. 49, persons who have paid the duty on game certificates in Britain are exempted from the duty in Ireland; and persons who have taken out a certificate in Ireland may kill game in Britain, upon paying the additional duty only.

By 2 & 3 V. c. 35, game certificates expire on the 5th of July instead of the 5th of April as heretofore.

By the acts of 1848, the 11 & 12 V. c. 29, and c. 30, the owner or actual occupier of inclosed lands, having the right of killing game thereon by himself or any person authorized by him in writing, according to prescribed form, to hunt hares on such inclosed land without taking out a game certificate. By s. 4, any person may join in hunting or coursing of hares, without a game certificate, but it does not extend to the laying poison for them, or to the shooting hares at night.

### III. PENALTIES ON UNCERTIFICATED PERSONS.

If any uncertificated person kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of searching for, or killing or taking game, he shall, on conviction before two justices, forfeit for every offence any sum not exceeding £5, together with costs: this is a cumulative penalty, and the offender is liable to the additional penalties under the Certificate Act, amounting to £23 13s. 6d., s. 23.

As the Certificate Act is unrepealed, a person without a certificate may, under 54 G. 3, c. 141, *assist*, by beating the bushes or otherwise, a sportsman having a game certificate on his own account, and who does not sport by virtue of a deputation, and who uses his *own* dog and gun. But a person assisting a sportsman who uses *other dogs than his own* would be liable to the penalties of sporting without a certificate.

But by 11 & 12 V. c. 29, any one stated in preceding section may join in hunting hares without certificate.

#### IV. TRESPASSES IN PURSUIT OF GAME.

Any person trespassing on land in the *day-time*, in pursuit of game, or woodcocks, snipes, quails, landrails or coney, to forfeit not exceeding £2, with costs; if one or more persons together commit such trespass, each to forfeit not exceeding £5; but the offender may urge any matter in defence which would have been a defence to an action of trespass; except that the leave of the occupier of the land would not be deemed a sufficient defence where the landlord has the right of killing the game, 1 & 2 W. 4, c. 32, s. 30.

The person having the right of killing the game, or the occupier of the land, or gamekeeper, or other person authorized by either of them, may require a person so found trespassing to quit the land forthwith, and to tell his name and abode: and in case of a refusal, or in case such person continue or return on the land, the party so requiring, and any person in his aid, may apprehend the offender and take him before a justice; and such offender to forfeit not exceeding £5, with costs: but the party arrested must be discharged unless brought before a justice within twelve hours, in which case he may be proceeded against by summons or warrant, s. 31.

Where five or more persons together, so trespassing, any of them being armed with a gun, shall, by violence or menace, prevent any authorized person from approaching them for the purpose of requiring them to quit the land, or to tell their names and abodes: every person so offending, or aiding, to forfeit not exceeding £5, in addition to any other penalty, with costs, s. 32.

Any person trespassing in the day-time on the queen's forests, in pursuit of game, to forfeit not exceeding £2, s. 33.

*Day-time* to be deemed from one hour before sunrise to one hour after sunset, s. 34.

These provisions as to trespassers do not extend to persons hunting or coursing, nor to persons claiming a right of free warren, nor to lord of manor or his gamekeeper. Neither does the act preclude any action of trespass; but no double proceed-

ing can be had, and a proceeding under the statute is a bar to an action. See *Trespass in Sporting*, p. 430.

#### V. SEIZING GAME ON THE PERSON.

If any person be found by day or night on any land in search of game, and have in his possession any game which "*appear* to have been *recently* killed," the person having the right of killing the game, or the occupier (whether or not he have such right by reservation or otherwise), or any gamekeeper or servant, of either of them, may demand such game, and *seize* it, if not immediately delivered up, s. 36.

As "*game*" only is mentioned, woodcocks, snipes, quails, landrails, or coney, cannot be so seized.

#### VI. DEER, HARES, CONEYS, AND PIGEONS.

*Deer*.—To course, hunt, snare, carry away, kill or wound, or attempt to kill or wound any deer kept in the *inclosed part* of any forest, chase, purlieu, or in any *inclosed land* wherein deer is usually kept, is felony, subjecting the offender to transportation for seven years, or imprisonment, with or without whipping, for two years; and if the same offence be committed in the *uninclosed part* of a forest, chase, or purlieu, the offender, on conviction before a justice, shall pay any sum not exceeding £50, and for a second offence be transported, or imprisoned, as last mentioned. *Suspected* persons, without lawful occasion, found in possession of deer, or any part thereof, or of any snare or engine for taking deer, shall, on conviction before a magistrate, forfeit any sum not exceeding £20. Setting engines for taking deer, or pulling down any fence or bank, inclosing land where deer are kept, subjects to a like forfeiture. Deer-keepers or their assistants, may seize the guns or dogs of any offenders for the use of their master; and to beat or wound in resisting such seizure, subjects to transportation for seven or imprisonment for two years, 7 & 8 G. 4, c. 20, ss. 26-29.

*Hares and Coneys*.—If any person unlawfully and wilfully, in the *night-time*, take or kill any hare or coney in any warren or ground lawfully used for the keeping thereof, whether inclosed or not, every such offender shall be guilty of a misdemeanor; and persons guilty of the same offence in the *day-time*, or of using any snare or engine, are subject to a penalty of £5. But this does not extend to the taking, in the day-time, any coneys on any sea-bank or river-bank in Lincolnshire, so far as the tide shall extend, or within a furlong of such bank, s. 3.

*Pigeons*.—To kill, wound, or take away any house-dove or pigeon under circumstances that do not amount to larceny,

subjects to a penalty not exceeding £2 over and above the value of the bird, s. 33.

#### VII. DESTROYING THE EGGS OF GAME.

If any person, not having the right to kill game on any lands, nor permission from the person having such right, shall take out of the nest, or destroy, the eggs of any bird of game, or of any swan, wild duck, teal, or widgeon, or shall knowingly have in his possession any such eggs so taken, such person, on conviction, shall forfeit not exceeding 5s., with costs, for every egg, 1 & 2 W. 4, c. 32, s. 24.

#### VIII. POACHING BY NIGHT.

The 9 G. 4, c. 69, was passed for the prevention of nocturnal poaching by armed men, and the first section enacts, that if any person by night shall take or destroy game or rabbits on *any land*, or shall enter therein with gun, net, engine, or other instrument for the purpose, he shall, on conviction before two justices, be committed to hard labour in the house of correction for not exceeding three calendar months, and at the expiration of that period, find sureties, himself in £10, and two others in £5 each, or one surety in £10, not to offend again for the next following year; and in case of not finding sureties, be *further* imprisoned six months: for a *second offence*, be imprisoned six calendar months, and find sureties, himself in £20, and two others in £10 each, not to offend during the two following years; in case of not finding sureties, be further imprisoned one year. The *third offence* is made punishable with transportation for seven years, or imprisonment with hard labour in the house of correction for not exceeding two years. Persons offending in Scotland, a first, second, or third time, are liable to the same punishments.

Owners and occupiers of land, their servants and assistants, may apprehend offenders, either on the spot or *other place* to which they may be pursued; and the offenders assaulting or offering violence with gun, club, stick, or otherwise, shall be deemed guilty of misdemeanor, and liable to transportation for seven years, or imprisonment with hard labour for two years.

Persons to the number of *three or more* entering, by night, *any land* for the purpose of taking or destroying game or rabbits, and being armed with a gun, bludgeon, or other offensive weapon, are subject to transportation for not exceeding fourteen years, or to imprisonment with hard labour for not exceeding three years.

For the purposes of the act, the *night* is considered to com-

mence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

Under 7 & 8 V. c. 29, all the penalties and punishments already mentioned for poaching by night in any open or inclosed grounds are extended to persons found taking or destroying by night any game or rabbits on any *public road, highway, path, or on the sides, gates, or openings* of the same.

#### IX. RIGHTS OF LANDLORD AND TENANT TO GAME.

Under any lease or agreement made prior to 1 & 2 W. 4, the landlord has the right of entering upon the land, or of authorizing other certificated persons to enter on the land, for the purpose of killing the game; and no person occupying land under a lease for life or years, prior to the act, has the right to kill game on such land, except where such right has been granted by the lease, or where, upon the original granting or renewal of such lease, a fine has been taken, or the lease has been made for a term exceeding twenty-one years, s. 7.

No person holding land is authorized to kill the game; or to permit any other person to do so, in any case where by deed, lease, or any written or parol contract, a right of entry has been reserved to the landlord or other person; neither does the act lessen any reservation, covenant, or agreement contained in any private act of parliament, deed, or other writing relative to game; nor prejudice the rights of any lord or owner of any forest, chase, or warren; nor of any lord of any manor, lordship, or royalty, nor of any steward of the crown; nor does it give any new interest to any owner of catlegates or rights of common; nor does it affect the rights of the queen, or rights of persons derived from the crown; and the lord of every manor has the right to the game on the wastes or commons within his manor, ss. 8-10.

Where a landlord has reserved to himself the right of killing game, he may authorize other persons to enter on the lands to kill it, s. 11.

Where the landlord has the exclusive right of killing game, given by the act or otherwise, the occupier is liable to a penalty of £1, with costs, for every head of game killed by him or other person authorized by him, s. 12.

In leases granted subsequent to the act, the tenant is entitled to the game upon the land in his occupation, unless restricted by the terms of his lease. Under all leases, however granted, *previously* to the passing of the act, the landlord is entitled to the game, except in the three following cases:—1. Where the right of the game has been expressly granted to the tenant. 2. Where a fine has been paid upon the granting or renewal of

the lease, which is a distinguishing test of church and college leases. 3. Where, in the case of a term for years, the lease has been granted for a term exceeding twenty-one years.

Although the landlord is entitled to the "game," he is not entitled to the woodcocks, snipes, quails, landrails, or coney on the land. These the tenant may kill; but he cannot give others the power to kill them.

#### X. POWERS AND DUTIES OF GAMEKEEPERS.

These form a sort of rural police in the execution of the game laws, and can only be appointed by particular persons. The lord of a hundred or wapentake cannot appoint a gamekeeper, *Doug.* 28; but the owner of a free warren may. So may the devisee of a manor in trust. And a corporation may appoint a gamekeeper, *Campb.* 457.

By 1 & 2 W. 4, c. 32, s. 13, lords of manors may appoint one or more gamekeepers to preserve or kill game within the manor for their own use, and authorize such gamekeepers to seize all dogs, nets, and other engines, used for killing game by uncertificated persons.

Lords of manors may depute any person to be a gamekeeper to a manor, and authorize him to kill game for his own use, or that of any other person specified in the deputation; and no person so deputed, and not killing game for the use of the lord of the manor, shall be entered or paid for as a gamekeeper or male servant, s. 14.

Any person entitled to kill game in Wales, on lands of the yearly value of £500, which lands he is beneficially entitled to in his own right, if they are not within the bounds of a manor, or enfranchised, may appoint gamekeepers to preserve or kill game on such lands, and on the lands in Wales of any other person, who, being entitled to kill the game thereon, shall by writing authorize him to appoint a gamekeeper, who shall have the power mentioned in the preceding paragraph, s. 15.

All appointments and deputations of gamekeepers must be registered with the clerk of the peace, and their powers cease on the revocation of the appointment, s. 16.

Gamekeepers may seize all guns and nets used by an uncertificated person; but he cannot seize hound nor game, 1 *Moore*, 290. And a gamekeeper cannot shoot a dog following game within manor, unless used by an uncertificated person for the purpose of killing game; though a regular park-keeper or warrener may destroy dogs pursuing deer or rabbits.

Except the lord or lady of a manor, justice of peace, or gamekeeper, no other person has a right to seize dogs or guns. The

owner of land cannot seize a dog for coursing a hare ; nor can any private person legally shoot a dog trespassing on his lands in pursuit of game, 2 *East*, 568 ; but when game is started and killed by a person on another's land, the latter may seize it for his own use, his local property continuing ; or a servant of the lord of a manor may seize game killed within it by an uncertificated person, for the use of the lord.

If the gamekeeper kill, shoot, or beat for game, *out* of the manor, he is liable to penalty, as if he had no deputation. But no one is justified in taking from him his dogs or gun, when *out* of the limits of his lord's manor, even in the pursuit of game, 2 *Wils.* 387. A gamekeeper may be *discharged* at pleasure, without previous notice, unless there be an express agreement to the contrary ; and the occupation of any house he may be permitted to reside in is merely an incident in his vocation, 16 *East*, 33.

A mistaken opinion appears to have been prevalent among gamekeepers that they had a right to *carry and use fire-arms* for the capture of poachers. This error was corrected by Mr. Justice Bailey (Lancaster Assizes, March 23, 1827), who expressly stated that no gamekeeper had a right to fire-arms for any such purpose, or to fire at any poacher whatever. No proprietor of game had power to give such authority to his keeper, who might certainly take into custody any poacher, but it was at his peril to use fire-arms.

#### XI. LICENCE TO SELL GAME.

Justices may hold a special session as often as they think fit, for the purpose of granting annual licences to deal in game ; and the majority of justices assembled may grant to any person being a householder, or keeper of a shop or stall within their division, and not being an innkeeper or victualler, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail-coach, or other public conveyance, nor being a carrier, or higgler, nor in the employment of any of the above-named persons, a licence to buy game of any person who may lawfully sell it, and to sell the same at any house, shop, or stall ; every licensed person to put outside his house, shop, or stall, a board, with his Christian and surname, and the words "Licensed to deal in Game" thereon, 2 & 3 W. 4, c. 32 ; 2 & 3 V. c. 35.

*Certificated* persons may sell game to licensed dealers ; except that gamekeepers paying a less duty than £3 13s. 6d. may not do so, otherwise than on the account, and with the written authority, of their masters.

Every licensed person annually to obtain a certificate on the payment of a duty of £2, to be in force for the same period as



his licence; such duty to be paid to the collectors of assessed taxes, as duties on game certificates are payable; the receipt for the duty to be free from stamp duty, and delivered on the payment of one shilling to the collector; the receipt to be exchanged for a ticket, as is done with game certificates: penalty for any licensed person dealing in game *before* he has obtained his certificate, £20.

The collectors to make out lists of persons, their names, and places of abode, who have obtained annual licences and certificates, and to show the same to any person at seasonable hours, on the payment of *one shilling*: the duties on certificates, and the penalty of £20 for dealing without a certificate, are recoverable in the same manner as duties and penalties on game certificates.

Partners, carrying on business at one house or shop, need only take out one licence.

If any licensed person is convicted of an offence against the act, his licence is void.

An uncertificated person selling or offering game for sale, or a certificated person selling or offering game for sale to an unlicensed person, shall forfeit for every head of game not exceeding £2, with costs.

Innkeepers, without a licence, may sell game, purchased of a licensed dealer, for consumption in their own houses.

Every person not being licensed, buying game of an unlicensed person, shall forfeit not exceeding £5 for every head of game, with costs.

If any licensed dealer shall buy or obtain game from any person not authorised to sell it; or sell game, not having the aforesaid board affixed to his house; or fix such board to more than one house; or sell game at any other place than where the board is fixed; or if any unlicensed person shall, by fixing a board or exhibiting a certificate, pretend to be licensed; every such offender shall forfeit not exceeding £10, with costs.

The servants of licensed dealers may sell game on the premises of their employer; or one licensed dealer may sell game on account of another licensed dealer.

## XII. FORESTS, CHASES, WARRENS, AND PARKS.

By the common law, the possessor of land has an exclusive right to all the wild animals found upon it, and he may pursue and kill them; and he may now by the common law, which in so far continues unrestrained by any subsequent statute, support an action against any person (unless privileged by free-warrant) who shall take, kill, or chase them. The statutory

qualifications to kill game, or, since they were abolished, the taking out of a certificate, conveys no property not previously existing; neither does it exempt from any punishment to which a person is liable for trespassing on another's ground; it merely exempts him from the penalties to which he would be liable for killing game without having first taken out the annual licence required by law.

Beside the absolute property, which the owner of the land possesses in right of the soil, a person may also have a qualified property in wild animals by grant of privilege; that is, he may have the privilege of taking or killing them in exclusion of other persons, in virtue of a franchise to have a forest, chase, warren, or park.

A *forest* is a royal domain for the preservation of the queen's beasts and fowls of forest, and is subject to its own laws, courts, and officers. Before the *Charta de Forestâ*, the sovereign could make a forest of any extent over the lands of his subjects. It is the highest franchise relating to game; a free chase is the next in degree; a park the next; and the last a free warren. The number of forests is sixty-nine, of which the four principal are, New Forest on the Lea, Sherwood Forest on the Trent, Dean Forest on the Severn, and Windsor Forest on the Thames.

A *chase* is of a middle nature, between a forest and a park; it differs from the former in that it may be held by a subject, and is governed by the common, not the forest law; and from the latter, in that it is not inclosed. A man may have a chase over another's ground, with privilege to keep royal game therein, protected even from the owner of the land. It is said there are thirteen chases in England.

A *park* is an enclosed chase, extending only over a man's own land, privileged for wild beasts. There are only seven hundred and eighty parks; for it is not every field or common which a gentleman pleases to surround with a wall or paling, and to stock with a herd of deer, that is thereby made a *legal* park. To constitute it, three things are requisite. 1. A royal grant thereof. 2. Enclosure by pale, wall, or hedge. 3. Beasts of a park, such as the buck, doe, &c. And when all the deer are destroyed, it can no more be accounted a park; for a park consists of *vert*, *venison*, and *inclosure*; and if it is determined in any of them, it is a total disparking, *Cro. Car.* 59, 60.

*Free warren* is a place privileged, by prescription or grant from the queen, for the keeping of beasts and fowls of the warren, which are hares and coneys, partridges, pheasants; and some add quails, woodcocks, and water-fowl, *Terms de Ley*, 589. Twenty years' undisturbed exercise of a claim of a warren or park will afford presumptive evidence of a right in the party so

enjoying it. The owner of a warren may lawfully kill any dog which is used to hurt the warren.

The rights of any forest, chase, or warren, are not affected by the Game Act. All the franchises of the description mentioned above, having their origin in the crown, may be destroyed by a reversion to the crown, or by surrender, or forfeiture, in consequence of a breach of the trust upon which they were granted.

A  
DICTIONARY  
OF  
LAW-TERMS, STATUTES, MAXIMS,  
AND  
JUDICIAL ANTIQUITIES.



A

# DICTIONARY

OF

## LAW-TERMS, STATUTES,

*ETC.*

*The terms which have been previously explained in the text of the work have been mostly omitted in the DICTIONARY, and a reference to them will generally be found in the Index.*

A.

**ABATE** has various significations in law; implying to break down, destroy, or remove: so, to abate a castle, fort, or house, is to beat it down; and to abate a nuisance is to put an end to it, or remove it out of the way.

**ABEYANCE** implies that the possession of a freehold inheritance, dignity, or office, is suspended until the owner appears, or the right thereto is determined. Titles of honour are in abeyance when it is uncertain who shall enjoy them; as when a nobleman, holding his dignity descendible to his heirs general, dies, leaving daughters, the queen by her prerogative may grant the title to which of the daughters she pleases, or to the male issue of one of them. A parsonage, remaining void, is said to be in abeyance.

**ABJURATION** is applied first to a sworn banishment, or the taking an oath to depart from the realm for ever, and was formerly in certain cases imposed on offenders, or religious recusants; but it has fallen into disuse, or been directly abolished as a statute. Second is the *Oath of Abjuration*, imposed by 13 W. 3, c. 6, and subsequent statutes, in which is asserted the exclusive right, under the Act of Settlement, of the present royal family to the crown of England. In it also the juror rejects the opinion that princes excommunicated by the pope may be deposed or murdered, or that his holiness, or any other foreigner, has any jurisdiction in this kingdom.

**ABSENTEES**, a parliament so called, held at Dublin, and mentioned in letters patent dated 29 H. 8, c. 4. It is also applied in an inculpatory sense to landowners, who draw their rents from one country, and, to its detriment, spend them in another.

**ACTS OF PARLIAMENT OR STATUTES.**—These are the written records of the laws of the realm, and are of two kinds, *public* or *private*. Acts are deemed *public* and *general*, of which the judges take notice without pleading; such are those concerning the queen and royal family, prelates, nobles, great officers, sheriffs, &c. Also, acts concerning taxes, commerce and trade in general, or concerning all persons in general, though it be a special or particular thing, as those relating to assizes, forests, chases, &c. *Private* acts are those which concern only a particular species, thing, or person, of which the judges will not take notice without pleading; such as those relating to corporate bodies; to dissenters; to colleges in universities; to particular parishes, inclosures, &c. *Public* and *private* acts are also distinguished as to fees. All bills whatever, from which private persons and corporations derive exclusive benefit, are subject to the payment of fees, and such bills are in this respect denominated *private bills*. In parliamentary language another distinction is used, and some acts are called *public general acts*, others *public local acts*, namely, church acts, canal and railway acts. It was not till the year 1796 that acts of parliament were made generally accessible to the public; prior to that time, only about 1100 copies were printed, which were confined to the members of both houses, the privy council, and certain great officers of state; but, in consequence of representations to parliament, 5500 copies of every public general statute, and 300 of every public local and personal statute, are now distributed through the United Kingdom, to the houses of parliament, public offices, public libraries, courts of justice, magistrates, and clerks of the peace. They are also sold to the public separately by the queen's printer at the rate of three halfpence a sheet for public acts, and three pence for private acts. Except in cases where the territorial limits of acts of parliament are expressly named, their jurisdiction is not always clearly ascertainable. The general principle of the local operation of the statutes seems as follows:—From *Magna Charta*, 9 H. 3 (A.D. 1224), to 10 H. 7 (1494), they extend to England and Ireland. From 10 H. 7 (1494), to 6 Anne, May 1st, 1707, they are limited to England. From 6 Anne, to 41 G. 3, Jan. 1st, 1801, they extend to England and Scotland. From Jan. 1st, 1801, they extend to the United Kingdom of England, Scotland, and Ireland; Wales and Berwick are included in *England*; and Guernsey, Jersey, Alderney, Sark, and Man, when specifically mentioned. A statute begins to operate from the time when it receives the royal assent, unless otherwise provided for. But

when an act expires before a bill continuing it has received the royal assent, the latter act takes effect from the expiration of the former, unless otherwise provided for, except as to penalties. Acts are to be construed equitably, not according to their letter, but the intent and object with which they were made; especially that these points be considered, namely, the old law, the mischief, and the remedy.

By 10 & 11 V. c. 69, more effectual provision is made for taxing the costs and expenses charged on *private bills* by parliamentary agents, attorneys, solicitors, and others. No action is to be brought for costs till one month after delivery of the bill for the same; unless the party to be charged is likely to quit the kingdom. Taxing officer to be appointed by the Speaker of the house of commons, and to execute his official duties conformably to the Speaker's directions. Speaker to prepare list of charges; and for matters not included in the list, the taxing officer may allow reasonable costs. Taxing officer may examine parties on oath, and call for books and papers relative to charges and expenses: but no power is given him over the amount of fees on private bills payable to the house of commons. Costs to be taxed on application of the party chargeable, or on application of parliamentary agent, attorney, or solicitor. Regulations of like import have been made by 12 & 13 V. c. 78, for the more effectual taxation of costs on private bills in the house of lords.

In 1850, the 13 V. c. 21 was passed for curtailing repetitions and redundancies in statutes, and which provides that any act passed may be altered, amended, or repealed, in the same session. Acts are to be divided into sections without the usual introductory words, as, "be it enacted." Where any act is referred to prior to 4 Hen. 7, it is made sufficient to cite the year of the king's reign, or if more statutes than one in the same year, the statute; and if more than one chapter, the chapter.

ACCOUNTANT-GENERAL, an officer created by 12 G. 1, c. 32, in the Court of Chancery, to receive an account for all moneys belonging to the suitors of the court, in the place of the Masters; which moneys are to be paid into the Bank, with the privy of such accountant-general, and laid out in the 3 per cent. consols, in trust for the parties, and to be taken out by order of the court. No fees are to be taken by this officer or his clerks; but they are to be paid salaries; the salary of the accountant-general is fixed, in lieu of fees and brokage, by 15 & 16 V. c. 87, at 3000*l*.

ACTION is a term applied to any suit at law, whereby a person seeks redress either for a civil or criminal injury. Action *on the case* is a general action, where a party seeks compensation in damages for an injury done without violence, and for which the law has not provided a specific remedy. Action *upon a statute* is where an aggrieved party sues upon a statute, and



seeks redress either by the express words of the statute or by implication. If a statute give a remedy for a matter actionable at the common law, the party may sue at the common law as well as upon the statute. But if a man bring his action at the common law, he waives his remedy by the statute. Action *qui tam*, or *popular* action, is such as is given by acts of parliament, which create a forfeiture, and impose a penalty for the neglect of some duty, or the commission of some offence, to be recovered by him who prosecutes. An informer, on a penal statute, is not generally entitled to his *costs*, unless they be expressly given to him by the statute. By the 18 Eliz. and 27 Eliz. c. 10, if any informer delay his suit, discontinue or become nonsuit, he shall pay the defendant his costs. To restrain partial or vexatious prosecutions under penal statutes, acts of parliament frequently vest the sole power to prosecute in the discretion of the law officers of the crown. For the process in a civil action, see p. 39.

ACTUARY may be properly applied to the registrar of a public body or manager of a joint-stock company, but is more specially applicable to the officer of an insurance company who combines with the duties of secretary those of a person skilled in the calculation of insurance risks, life annuities, and reversions; the word has a legal signification from its recognition in the acts for regulating Friendly Societies.

ADDITION is a title given to a man beside his Christian and surname; that is to say, of what estate, degree, or trade he is, and of what town or country. Additions of *estate* are yeoman, gentleman, esquire. Additions of degree are names of *dignity*; as duke, marquis, earl, knight. Additions of *trade* are carpenter, mason, tiler, &c. Additions of *residence*, York, Norwich, London, &c. Such additions are often necessary in legal proceedings, by 1 H. 5, c. 5.

ADJUDICATION, a Scottish law term for the attachment of real or personal estate, and is extendible to all such property, applicable to the liquidation of debts, as is not attachable by the simpler process of arrestment.

AD QUOD DAMNUM, a writ which ought to be issued before the queen grants certain franchises, as turning an ancient highway, or establishing a fair or market, which may be prejudicial to others: it is directed to the sheriff, to inquire what damage the grant may do. The river Thames is a highway, and cannot be diverted without an *ad quod damnum*, and to do such a thing ought to be by grant of the sovereign.

ADVOCATE is the same in the civil and ecclesiastical law as counsellor in the common law, and who assists his client with advice, and pleads for him. *Lord-Advocate* is the title given to the principal public prosecutor in Scotland. He is assisted by a solicitor-general and junior counsel, generally four in number, who are termed advocates deputy. The *Faculty of*

*Advocates* constitutes the bar of Scotland, and consists of 400 members.

**ADVOWSON** is the right of presentation to an ecclesiastical living or benefice; he who possesses this right is styled the *patron*. It is deemed a temporal interest, and may be granted by deed or will; still it is not properly a *beneficial* interest, though often so perverted; but, as Lyndwood says, "an honorary, burthensome, and useful right."

**AFFIDAVIT**, an oath, in writing, sworn before an officer of a court, or other person duly authorized to administer such oath, to affirm the truth of the facts therein contained. The true place of abode, and addition of every person making an affidavit are to be inserted therein. Affidavits are in many cases made for the purpose of founding a process or preliminary proceeding; as an affidavit to hold to bail, an affidavit of non-payment of money awarded to be paid, or to ground an attachment for contempt. The practice of magistrates receiving affidavits, or voluntary declarations on oath, relative to matters not the subject of judicial inquiry, is prohibited by 5 & 6 W. 4, c. 62.

**AGISTMENT** is where cattle are taken in to pasture, at a certain rate per week, and is so called because the cattle are suffered *agiser*, that is, to be levant and couchant. There is also agistment of sea-banks, where lands are charged with a tribute to keep out the sea.

**ALBERT, PRINCE**, the consort of her majesty, is relieved of alien disqualifications, and by 3 V. c. 1 and c. 2 made in all respects a natural-born subject of this kingdom, as much as if his highness had been born within the realm. The 3 V. c. 3, settles upon the prince £30,000 per annum, to commence from the day of his marriage with the queen, and continue during his life; but the prince by the marriage acquires no right over any property of her majesty.

**ALECONNER**, an officer appointed in the court-leet, sworn to look to the assize and goodness of ale and beer within the precincts of the leet.

**ALE-STAKE**, a maypole so called, because the country people drew much ale there; but it is not the common maypole, but rather a long stake, driven into the ground, with a sign on it, that ale was to be sold there. *Cowel*.

**ALDERMAN** literally imports no more than *elder*, and was one of the three degrees among the Saxons; *ætheling*, was the first, and *thane* the lowest, but alderman was equivalent to our earl; the word was disused in the latter ages of the Saxons, and earl introduced in its place. Aldermen, in the city of London, are magistrates, and chosen for life. Under the Municipal Corporation Act, they are chosen from the town council; they have precedency only, and no duties distinct from those of other councillors.

**ALFET** (Saxon *alfæth*.) a cauldron of boiling water, into which a criminal was to dip his arm up to the elbow, and there hold it for some time.

**ALIEN** is one born without the dominion or allegiance of the crown of England. By 7 & 8 V. c. 66, various statutory disabilities, by which aliens were incapacitated from the possession of property in this country, were mitigated, and they were enabled to acquire nearly the full rights of natural-born subjects, with the exception of eligibility to become a member of the Privy Council, of either house of parliament, or of a municipal corporation. Every person born of a British mother may hold real or personal estate; if not of British maternity, an alien, if the subject of a friendly State, may hold personal estate, same as an Englishman; or, if resident, may take land or tenements and chattels, for the purpose of occupation, trade, or manufacture, for any period not exceeding 21 years. Aliens may become naturalized on memorializing the Home Secretary, and taking a prescribed oath, and paying the fees; upon which a certificate will be granted and enrolled in the Court of Chancery. An alien woman marrying a natural-born subject becomes thereby naturalized. An alien indicted for felony or misdemeanor is entitled to be tried by a jury of one-half foreigners. The act which regulates their entry into this country is 6 W. 4, c. 11, by which masters of vessels are to declare to the chief officer of customs at the port of arrival the names and description of aliens on board, or who shall have landed therefrom, penalty for default, £20, or £10 for each alien not reported: not to extend to foreign mariners employed in the navigation of the vessel. Alien on arrival to declare to an officer of customs his name and description, under penalty of £2. Officer to register declaration, and deliver to the alien, without fee, a certificate. Certificate to be returned on departing the realm, and transmitted to Secretary of State. Making false declaration, or forging certificate, penalty not exceeding £100, or three months' imprisonment. Act not to affect foreign ministers or their servants, nor aliens who have been resident three years and obtained certificate thereof; nor aliens under 14 years of age. By 10 & 11 V. c. 83, the acts of the colonial legislatures for granting to aliens the privileges of naturalization within their jurisdiction are declared to be valid: but hereafter such acts must be confirmed or disallowed by the crown. The 7 & 8 V. c. 66, is declared not to extend to the colonies. The Bankrupt Act, 12 & 13 V. c. 106, s. 277, extends to aliens and denizens, both to make them subject thereto, and to entitle them to all the benefits given thereby.

**ALIMENT**, in law, includes food, clothes, and habitation.

**ALIMONY**, or aliment, in Scottish law, is an allowance for maintenance, to which a married woman, during separation, is

entitled from her husband, except in cases of elopement or adultery.

**ALLEGIANCE** is the duty and obedience due from a subject to a superior. The present oath of allegiance, as settled at the Orange revolution, is,—“I do sincerely promise and swear that I will be faithful and bear true allegiance to her majesty Queen Victoria.” By 1 G. 1, c. 13, this oath may be tendered by two justices to any person suspected of disaffection.

**ALLOCATUR**, it is allowed, applied to the certificate of allowance of costs by the master on taxation.

**ALLODIAL** is used in contradistinction to *feudal*, and is where an inheritance is held without any acknowledgment to any lord or superior. So *allodial* lands are free lands, enjoyed without paying any fine, rent, or service.

**ALMONER**, an officer in a king's, bishop's, or other great man's household, whose duty it was to distribute alms to the poor. Previous to the dissolution of the religious houses, an almoner was attached to every monastery. At present the Marquis of Exeter is the hereditary grand almoner for disbursing the royal alms.

**AMBIDEXTER**, one that can use his left hand as well as his right, or that plays on both sides; applied to a juror who takes money of both parties for his verdict.

**AMICUS CURIÆ**: if a judge is doubtful or mistaken in matter of law, a stander-by may inform the court as *amicus curiæ*, or friend of the court.

**AMY**, a friend; thus infants are said to sue by *prochein amy*, that is, by next friend.

**ANCESTOR**; the law makes a distinction between *ancestor* and *predecessor*; the one being applied to an individual and his ancestors, the other to a corporation and its predecessors.

**ANCIENTS**, a grade in the Inns of Court. In Gray's Inn, the society consists of benchers, *ancients*, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, such as have gone through or are past their readings, are termed ancients; the inns of Chancery consist of ancients and students, or clerks; and from the ancients one is yearly chosen, the principal, or treasurer. *Cowel*.

**ANCIENT DEMESNE** are such lands as were entered by William I., in Domesday, under the title *De Terrâ Regis*: and which at this day are held by a species of copyhold tenure.

**ANNATS**, the same as first fruits, which *see*.

**ANNO DOMINI**, the computation of time from the birth of Jesus Christ, which is generally inserted in the dates of all public writings, with an addition of the year of the king's reign.

**ANNULUM ET BACULUM**. The ancient mode of granting in vestiture of spiritual jurisdiction to the bishops was *per an-*

*nulum et baculum* ; by the prince delivering to the prelate a ring, pastoral staff, and crosier.

ANNUM LUCTUS, the year of mourning, during which the civil law ordained a widow should remain unmarried : and the same rule prevailed among the Romans in the time of Augustus. It was intended to prevent the difficulty, which might arise from a widow marrying, and having a child so soon after the death of the first husband that it might be uncertain which husband was the father.

APPANAGE, a provision of lands or feudal superiorities, formerly assigned by the kings of France for the maintenance of their younger sons.

APPARITOR, a messenger, or officer, who serves the processes of the ecclesiastical courts.

APPEAL is the removal of a cause from one court to another that is superior, for ultimate decision. An appeal lies from the inferior courts of record into the Queen's Bench : and the writ of error from the Queen's Bench, or Common Pleas, is returnable into the Exchequer Chamber, and from thence to the house of lords, which is the only final judgment, and conclusive on all parties. In *criminal cases*, the judgment of the lower tribunals may be reversed by writ of error. There are also appeals in equity, in bankruptcy, and from the ecclesiastical and admiralty courts, and from the *summary* convictions of magistrates. All appeals are subject to regulations as to security for costs, bail, and deposits.

APPROPRIATION is where the tithes, glebe, or other ecclesiastical dues, instead of being in the hands of the parson, are appropriated to the use of a bishopric, prebend, college, or other spiritual corporation. Prior to the dissolution of religious houses, in the reign of Henry the Eighth, the appropriations belonging to such houses amounted to more than one-third of all the parishes in England. These by the rules of the common law would have been disappropriated, had not a clause been inserted in the statutes of dissolution, to give them to the king in as ample a manner as the religious houses held the same at the time of their dissolution. From this source sprung the *lay* appropriations, or secular parsonages, they having, from time to time, been granted out by the crown ; and whence, according to Spelman, they are now called *impropriations*, as being improperly in the hands of laymen. The distinction, therefore, between *appropriation* and *impropriation*, though the terms are sometimes confounded, is this : when a benefice is in the hands of a bishop, college, or religious house, it is an *appropriation* ; when in the hands of a layman, an *impropriation*.

APPROVEMENT, an old term for *improvement* ; as where the lord incloses or discommons part of the waste, he is said to *approve*.

**ARGENTUM DEI**, God's money; money given in earnest, to bind any bargain. It is still common in the North of England, in bargains for cattle and other commodities.

**ARMIGER**, or esquire, for the terms are related, is a title of dignity, belonging to such gentlemen as bear arms.

**ARREST** is the corporeal touching or seizing the person, which, in criminal cases, is termed an *apprehension*. It has been adverted to (pp. 40 & 47), and we shall here only remark, that in making an arrest in *civil suits*, the corporeal seizing or touching the body is not absolutely necessary; it is sufficient if the bailiff have such possession of the person of the defendant that escape is hardly possible. Thus, if a bailiff come into a room, and tell the defendant he arrests him, and lock the door, it is enough. *Bare words*, however, without some intimation of power over the person, will not constitute an arrest. After the arrest, the officer may justify breaking open any house in which the defendant may take refuge. No arrest can be made on Sunday, unless after an escape.

**ARTICLES**. 1. *Articles of war*, are a code of laws made by the crown, from time to time, conformably to the annual Mutiny Act, for the regulation of the land forces. 2. *Articles of the navy*, are rules and orders made pursuant to 31 G. 2, c. 10, for the government of the royal navy. 3. *Articles of religion*, are the 39 Articles drawn up by the Convocation in 1562, unto which persons admitted into ecclesiastical offices are to subscribe. 4. *Articles of the peace*, are a complaint exhibited before a judicial authority, to compel a person to find sureties to keep the peace.

**ARMORIAL BEARINGS**. Coats of arms were first introduced about the reign of Richard I., who brought them from the crusade in the Holy Land, where they were first invented, and painted on the shields of the knights, to distinguish the variety of persons of every Christian nation who resorted there, and who could not, when clad in complete steel, be otherwise identified. They were the criterion of dignity and descent. In 1798, when the subject was before parliament, it was ascertained that there were 9458 families entitled to bear arms in England; in Scotland, 4000. These families, in the language of heraldry, are *noble*, either by creation as peers, or as gentry, who have acquired their armorial bearings from time immemorial. There is nothing, however, to prevent persons assuming arbitrary insignia and armorial bearings, to which they are not entitled; and patents of nobility, as they are termed, may be obtained on proper representation at the Heralds' College. Armorial bearings, whether borne on carriages, plate, seals, or otherwise, are subject to a duty.

**ARTIFICER**, a skilled workman, or, agreeably with a more recent synonyme, an *operative*, whose occupation is to manu-

facture commodities out of wood, iron, cotton, or other raw material.

*ASSAY, of weights and measures*, is the examination of weights and measures by clerks of the market, or other persons appointed for that purpose. The assaying of *plate* made by goldsmiths is the ascertaining the proportion of alloy and pure gold or silver therein, and is a duty discharged by the Goldsmiths' Company, London, who, by various charters and statutes, are constituted assay-masters of all England. All gold and silver plate must be conformable to the standard fineness certified by the stamp of the company's arms, and a variable mark to denote the year in which it was made, with the initials of the maker's name; to imitate this is felony, and to sell without it a misdemeanor, incurring the forfeiture of the article sold. But this does not extend to jeweller's work, such as watch chains, bracelets, or highly-chased articles of gold that the company's marks could not be affixed to without injuring the workmanship. See *Gold*.

*ASSESSED TAXES* include various domestic taxes, assessed or levied on houses, menial servants, carriages, pleasure horses; and other articles of private use and luxury. In 1851, duties on windows were abolished by 14 & 15 V. c. 36, and replaced by a duty on inhabited houses being worth the rent of *twenty pounds or upwards* by the year.

Other assessed taxes are regulated by 16 & 17 V. c. 90, and the duties under which act on carriages, horses, dogs, servants, &c., commenced April 5, 1854.

#### *Inhabited House Duty.*

If used wholly or partly for the sale of goods as a shop or warehouse, the shop or warehouse being on the ground floor; or for the sale of beer, wines, or spirits; or if occupied by a tenant or farm-servant for husbandry purposes only, for every 20s. of yearly value, the sum of . . . . . 6*d*.  
If not occupied for any such purposes, for every 20s. of yearly value . . . . . 9*d*.

#### *Duties on Male Servants.*

	£	s.	d.
For every such servant of the age of 18 years and upwards . . . . .	1	1	0
And for every such servant under the age of 18 years . . . . .	0	10	6

*Exemptions.*—One male person employed by a licensed victualler to carry out beer to customers, although he may be occasionally required to wait on guests; and also the servant

employed as an ostler or helper in the stables of any licensed innkeeper.

*Duties on Carriages.*

	£	s.	d.
For every carriage with <i>four wheels</i> :			
Where the same shall be drawn by two or more horses or mules . . . . .	3	10	0
And where the same shall be drawn by one horse or mule only . . . . .	2	0	0
For every carriage with four wheels, each being of less diameter than 30 inches:			
Where the same shall be drawn by two or more ponies or mules, neither of them exceeding thirteen hands in height . . . . .	1	15	0
And where the same shall be drawn by one such pony or mule only . . . . .	1	0	0
For every carriage with <i>less than four wheels</i> :			
Where the same shall be drawn by two or more horses or mules . . . . .	2	0	0
And where the same shall be drawn by one horse or mule only . . . . .	0	15	0
And where the same shall be drawn by one pony or mule only, not exceeding thirteen hands in height . . . . .	0	10	0
And where any such carriage shall be kept and used solely for the purpose of being let for hire . . . . .	One-half of the above-mentioned duties respectively.		
For every carriage used by any common carrier principally and <i>bona fide</i> for and in the carrying of goods, wares, or merchandise whereby he shall seek a livelihood, where such carriage shall be occasionally only used in conveying passengers for hire, and in such manner that the stage carriage duty or any composition for the same shall not be payable under any licence by the Commissioners of Inland Revenue:			
Where such last-mentioned carriage shall have four wheels . . . . .	2	6	8
And where the same shall have less than four wheels . . . . .	1	6	8

*Exemptions.*—Any carriage licensed as a hackney carriage, or public stage carriage, or carriage let for hire, with a horse therewith, by any person duly licensed to let horses for hire. Also any waggon, van, cart, or other such carriage which shall be kept to be used solely in the course of trade or in husbandry, and whereon the christian name and surname and place of abode of the owner, shall be legibly painted; provided that such carriage



shall not on any occasion be used for any purpose of pleasure, except for conveying the owner or his family to or from a place of worship.

*Horses and Mules (Schedule E).*

	£	s.	d.
For every horse . . . . .	3	17	0

By 19 & 20 V. c. 82, this duty to be paid for every horse which shall start or run for any plate, prize, or sum of money, and to be the duty for one year ending April 5th next after the day on which the horse starts or runs. Duty to be paid to the clerk of the course previously to the starting of the race-horse. Penalty on the owner refusing to pay the duty, or not producing receipt of previous payment, £50, and a like penalty on the clerk of the course not demanding the duty before the race, or otherwise neglecting his duty as the act directs.

For every other horse, and for every mule, exceeding respectively the height of thirteen hands of four inches to each hand, kept for the purpose of riding, or drawing any carriage chargeable with duty, except horses chargeable under schedule F . . . . .	£1	1	0
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By 17 V. c. 1, any horse used principally by a common carrier in the conveyance of goods, and occasionally only in conveying passengers, for hire, is not liable to be charged any other or higher duty than the duty charged in schedule F.

*Horses and Mules (Schedule F).*

For every horse and mule exceeding respectively the height of thirteen hands and not chargeable under schedule E . . . . .	£0	10	6
For every pony or mule, not exceeding the height of thirteen hands, kept for the purpose of riding, or drawing any carriage chargeable with duty . . . . .	0	10	6
And for every such pony or mule as last-mentioned kept for any other purpose . . . . .	0	5	3

Any person *bonâ fide* following the occupation of a farmer, and making a livelihood principally by husbandry, may keep one horse for the purpose of riding, or of drawing any carriage chargeable with duty, and be chargeable for such horse with the duty of 10s. 6d. only. Like duty of 10s. 6d. payable for one horse kept for riding or drawing, by the established clergy, dissenting or catholic minister, or any physician, surgeon, or apothecary.

*Dogs.*

	£	s.	d.
For every dog, of whatever description or denomination the same may be . . . . .	0	12	0
No person chargeable with duty to any greater amount than £39 12s. for any number of hounds, or £9 for any number of greyhounds, kept by him in any year.			

*Exemption.*—Any dog kept and used in the care of sheep or cattle, or in driving or removing the same: provided no such dog shall be a greyhound, hound, pointer, setting dog, spaniel, lurcher, or terrier.

	£	s.	d.
Persons wearing <i>hair-powder</i> . . . . .	1	3	6
Persons using <i>armorial bearings</i> , and keeping a coach, or other taxable carriage . . . . .	2	12	9
Persons not keeping such carriage . . . . .	0	13	2
<i>Horse-dealers</i> in London . . . . .	27	10	0
— elsewhere . . . . .	13	15	0
Gamekeeper acting under a deputation duly registered :—			
If assessed as a servant . . . . .	1	6	6
If not so assessed . . . . .	4	0	10
On every other person using dog, gun, net, or engine for the taking or killing of game . . . . .	4	0	10

By 1 & 2 W. 4, c. 32, persons licensed to deal in game are to take out a certificate, charged with a duty of £2; but certificated persons may sell game to licensed dealers, if paying a duty of £3 13s. 6d. and ten per cent. additional.

*Stage-coach Duties.*—1d. per mile is payable besides the licence.

Duties on passengers conveyed for hire by carriages travelling upon railways—£5 per cent. on the gross amount of fares.

*Post-horse Duties.*

By 16 & 17 V. c. 88, the duties payable on horses let for hire, and on licences from October 10, 1853, are the following: on every licence to be yearly taken out by any person who shall let any horse for hire, with or without a carriage to be used therewith:—

Where the person taking out such licence shall keep at one and the same time to let for hire one horse or one carriage only . . . . .	£7	10	0
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	£	s.	d.
And where such person shall keep as aforesaid any greater number of horses or carriages—			
Not exceeding two horses or two carriages	12	10	0
Not exceeding four horses or three carriages	20	0	0
Not exceeding eight horses or six carriages	30	0	0
Not exceeding twelve horses or nine carriages	40	0	0
Not exceeding sixteen horses or twelve carriages	50	0	0
Not exceeding twenty horses or fifteen carriages	60	0	0
Exceeding fifteen carriages	70	0	0
Exceeding twenty horses, then for every additional number of ten horses, and for any additional number less than ten over and above twenty or any other multiple of ten horses, the further additional duty of	10	0	0

Persons intending to let horses for hire must make entry of their stables, coach-houses, &c., with the proper officer of excise duties. Penalty £100 for letting horses for hire without licence, or keeping a greater number of horses, &c., than licence authorizes, s. 16.

**ASSESSOR**, strictly one learned in the law, who sits by a magistrate or other person to advise and aid him in the discharge of judicial duties. Under the Municipal Corporation Act, two assessors are annually elected by the burgesses, whose duties are to revise the burgess lists, and, in conjunction with the mayor, to be present at the election of councillors and ascertain the results of elections.

**ASSETS**, from the French *assez*, "enough," are, strictly, effects in the hands of an executor or assignee, sufficient to meet demands on the estate of the testator or bankrupt. But the term is more generally applied to all property realized and available to the demands of creditors.

**ASSIGNEE**, the party to whom property, trust, or legal security is assigned, and a term of frequent occurrence in the Insolvent laws and conveyance transactions.

**ASSIZE** is derived, by Sir Edward Coke, from the Latin *assideo*, to sit by or together. Assizes are held twice a year, or three times in the home counties, except Middlesex, before two judges appointed by the queen's special commission. These judges sit in virtue of five several commissions; namely, commissions of the peace, of oyer and terminer, of gaol delivery, of assize, and nisi prius. Assize also signifies any statute or ordinance for regulating the weight, measure, or quality of the thing it concerns; as the assize formerly of bread or ale.

**ASSURANCE** is the title or legal evidence by which an estate is assured to the owner. It has also latterly begun to be applied

to contingencies of lives instead of *insurance*, which is reserved for fires, losses at sea, &c.

**ATTACHMENT** differs from arrest in this, that arrest is only upon the *person*; whereas an attachment is often upon the goods. *Attachments* are sometimes issued at the discretion of the judges of a court of record, against a person for *contempt*, for which he is committed without appeal, indictment, or information: for though Magna Charta says none shall be imprisoned without the judgment of his peers, or the law of the land, yet this summary proceeding is considered necessary for the due administration of justice, and is certainly now confirmed as part of the law of the land. In civil suits, by the custom of the city of London, the money or goods of a defendant may be attached, either in the plaintiff's own hands or of a *third person*, and this either in the mayor's or the sheriff's court. But the appearance of the party in court, whose goods have been attached, dissolves the attachment.

**ATTAINDER** is the stain and degradation which attached to a person and his descendants by being capitally adjudged guilty of treason or felony. It is of feudal origin, and entailed forfeiture of property and corruption of blood; by which last the convict was divested of his civil rights and reputation, could not be a witness in any court, nor have heirs, so that his estate escheated to the king. These old common-law consequences of offences have been much restricted. *Corruption of blood* is now limited to treason and murder, and the lands in high treason are absolutely forfeited; in minor treasons, created by statute, they are forfeited during the life of the offender; in attainder for murder or felony, the forfeiture of lands extends for only a year and a day; but the crown, on petition of relations or creditors, usually waives its claim to forfeitures. Bills of attainder have been sometimes brought into parliament, and passed into acts against traitors and great delinquents; upon which the offenders are executed and their lands and goods forfeited, save the wife's jointure and dower. See *Forfeiture*.

**ATTORNEY-GENERAL**, a ministerial officer of the crown, created by letters patent, whose public functions are to file bills in the Exchequer, to exhibit informations, and prosecute for the crown in civil matters. He is the only representative of the queen in the courts. When he prosecutes in his official capacity, he has always the right to reply.

**AUGMENTATION**, the name of a court erected in the 27 H. 8, for the protection of the king's interest in the possession of the dissolved religious houses, with revenues under £200 per annum. It still subsists in Palace Yard, and is the depository of valuable records.

**AUSTRALIAN COLONIES.** The 5 & 6 V. c. 36, establishes a uniform system of disposing of the waste lands of New South Wales

and South and West Australia, by interdicting the alienation of land unless by sale, except land retained or bestowed for roads, schools, places of worship, or other public purposes. All land is required to be surveyed and mapped before sold, and then sold in lots not exceeding an area of one superficial mile, except where any person offers to purchase a block of unsurveyed land comprising not less than 20,000 acres, at a price not less than the lowest upset price per acre. The sales are to take place quarterly at least, and as much more frequently as the governor may think fit; public notice of the time and place of the sale, and the situation and nature of the lands, with their upset prices, must be given some time within three months preceding the sale, or the sale will be illegal. In every sale the lands are to be divided into three classes—town lots, suburban lots, and country lots; the *first* to include lands within the limits of any existing town, or within any locality designed by the governor as the site of any town to be erected; the *second*, all lands within the distance of five miles from the nearest point of any existing or contemplated town; and the *third*, all lands not comprised in those classes. The governor, however, has the power of varying the arrangements in some degree. One pound per acre is declared to be the lowest upset price per acre, and this price may be raised by the governor on making proclamation of such increase. The Privy Council also have the power of making such increase in price, and of disallowing any increase made by the governor, within six months of their knowledge of the same; but if not then disallowed, the price cannot be afterwards decreased either by them or the governor. The governor may also, at any sale, affix a higher than the upset price to any part not exceeding one-tenth of the land in the third class, and to the whole of the land in the first and second classes. Lands in these two classes are not to be sold in any manner except by auction; but those in the third may be sold by the governor by private contract, if they have been first offered to sale by auction without being sold, but not at a price less than that at which they were put up to auction. At the sales by auction one-tenth of the price is to be paid down, and the remainder within one calendar month, or the deposit to be forfeited, and the bargain voided. Money may be paid for lands into the Treasury in England, for which the parties may receive certificates, which will be received in payment by the governor for lands purchased either at public auction or by private contract. The expenses of making surveys, for management, and of sale, are to be the primary charges upon the land revenues; the gross proceeds of their sale are to be applied to the public service of the colony, but one-half at least is to be appropriated to the purposes of promoting emigration under the direction of the Board of Treasury. Under 5 & 6 V. c. 76, a legislative council is established

in New South Wales, to consist of thirty-six members, twelve to be appointed by her majesty, and twenty-four to be elected from defined districts. The electors are to be natural-born subjects, under no legal disqualification, in possession of property of the value of £200, or the occupancy of a house of the clear annual value of £20, for six months previous to the date of the writ for such election. The qualification for members of the council is to be an estate of freehold in New South Wales, of the yearly value of £100, or of the value of £2000 sterling money. The governor is to fix the time and place of meeting of such legislative council, and there shall be a session at least once in every year, so that a period of twelve months shall not intervene between each; every such council to continue for five years, but subject to be prorogued or dissolved by the governor. The council are to elect a speaker; and one-third of the members, at least, must be present for the transaction of business. They are empowered to make laws for the peace, welfare, and good government of the colony, so far as they are not repugnant to the laws of England; and they are not to interfere with the appropriation or sale of lands belonging to the crown, or with the revenue thence arising. The governor may present bills or laws for the approval of the council, and he may withhold or refuse his assent to bills passed by them. The whole of the revenue from taxes and duties is appropriated to the service of the colony, but to be charged with the expense of the collection and management, and to the payment yearly to her majesty of £33,000 for the civil and judicial services, and £30,000 for public worship; the items of the civil service to be laid before the council. The governor is also empowered to incorporate the inhabitants of every county or other division as he may think fit, and form district councils for local and municipal government, such councils to be elective, in numbers varying according to the population of the district, the qualifications of members and electors to be the same as in the case of the legislative council; they are not to continue in office for more than three years, unless re-elected, and are to be presided over by a warden appointed by the governor. No by-law can be made by these councils that imposes the punishment of imprisonment, nor can they inflict a penalty above £10. The 5 & 6 V. c. 36, which included New Zealand in its provisions, is exempted by 9 & 10 V. c. 42, and the crown is empowered to lease waste lands for any term of years not exceeding fourteen, reserving a rent or service on such lease. Justices may dispossess persons unlawfully occupying waste lands; but nothing in the act extends to persons having occupied waste lands within the boundary of location without interruption for the space of twenty years, prior to August 28, 1846. By 13 & 14 V. c. 59, the district of Victoria (which *see*) is separated from New South

Wales, and the rights and privileges conceded to New South Wales granted to Van Diemen's Land and the other Australian colonies.

## B.

**BACHELOR**, one who has never been married. Bachelors and widowers, unless they be Roman Catholic priests, who keep *male* servants are assessed an extra pound for each, in consideration of being unmarried. *Bachelor of Arts* is the first degree taken by students in the universities.

**BACKING OF WARRANTS**. When the warrant of a justice in one county is to be executed in another, it must be signed by a justice in such other county, which is termed *backing it*.

**BAILIFFS**. These are of divers sorts ; as bailiffs of liberties, of lords of manors, of cities, as of Westminster, and of royal castles, as of Dover. Sheriffs are also called the queen's bailiffs, and their counties their *bailiwicks*. There are also bailiffs of forests and bailiffs in husbandry ; which last imply the steward, or chief servant, of a landowner. *Bound bailiffs* are sheriffs' officers, as being bound to the faithful execution of their office. The 7 & 8 V. c. 19, was passed to check the extortions of bailiffs in actions for debts and damages in certain petty courts held in sundry hundreds, lordships, and liberties, and provides that such bailiffs shall be appointed by the judges of the courts.

**BAILMENT** is a delivery of goods in trust, on a contract expressed or implied, that the trust shall be faithfully executed on the part of the baillie, and the goods re-delivered as soon as the time or use for which they were bailed shall have elapsed or be performed. The law of bailment has been comprised in the chapters on *Contracts* and *Assumpsit*.

**BAN**, public notice given of anything. The bans published previous to marriage are in order that if any person has any objection to urge against the marriage, he may do so before the nuptials are solemnised.

**BANKRUPT** is formed from the Latin *bancus*, a *bench* or *table*, and *raptus*, broken. Bank originally signified a bench, which the first bankers used in the public places, in markets and fairs, on which they told their money, and wrote their bills of exchange, &c. Hence when a banker failed his *bank* was broken, to advertise the public that the person to whom the bench belonged was no longer in a condition to continue his business.

**BANNERET**, an intermediate name of dignity, nearly, if not entirely obsolete, between that of baron and knight.

**BAR**, a term applied to the entire body of barristers, who advise in matters of law, plead in the courts, behind the partition, from which the term is deprived, that separates them from the bench on which the judges sit. A *trial at bar* is one which

takes place before all the judges at the bar of the court in which the action is brought. Bar is also applied to the place at which prisoners stand for trial, and to the partition in both houses of parliament, beyond which none but members and officers are allowed to pass. At a meeting of the northern circuit in 1851, a resolution affecting the etiquette of the bar with reference to the county courts was carried by a large majority. It has, since the institution of these courts, been considered doubtful whether a barrister could, consistently with the etiquette of the profession, accept a brief in any of these courts without a special fee, that is, a fee less than two guineas. This question was brought under consideration, and at a very full court it was decided that it was not contrary to etiquette for a barrister to hold a brief in a county court without a *special fee*; but that any barrister might accept and hold a brief in any of these courts with a fee of one guinea only, if he thought fit to do so. It was not denied that the etiquette of the profession had been otherwise up to that time, but it was declared by the court that the county courts were likely to introduce so great a change in a considerable part of the practice of the profession, and that they formed a case so very different from that of the courts in which the ancient practice had been observed, that it had become necessary to abandon the old rule, so far as the county courts were concerned. It was also decided that it was quite in accordance with the etiquette of the profession for barristers to attend and sit in the county courts, and to form a bar there, if they thought fit to do so.

**BARONS.** A title of distinction, formerly very common. The burgesses of London, in Henry III., were styled barons, and so were persons holding lands of the king. There are still barons by office, as those of the Exchequer and of the Cinque Ports. The barons of the house of lords are—1. By prescription; for that they and their ancestors have immemorially sat in the upper house. 2. Barons by patent, having obtained a patent of this dignity to them and their heirs. 3. Barons by tenure, holding the title as annexed to grants of land, which is the title by which the bishops sit in the upper house, though Mr. Hallam considers that they hold their legislative places as rights, annexed to the ecclesiastical office by the custom of Europe.

**BARON and FEME**: the legal style of husband and wife.

**BARONET.** A dignity inheritable, created by letters patent and descendible to the male heirs of the grantee. It has precedence of knighthood, and is the next title or degree to a baron.

**BARONY**, in Ireland, is used for a subdivision of counties, and is equivalent to hundred or wapentake in England.

**BENEFICE**, generally applicable to any church dignity or preferment, but usually restricted to a parochial living, either



rectory or vicarage. It must be given for life, not for years or at will.

**BENEFIT OF CLERGY.** A term of such frequent occurrence in old expositions of the criminal law that it may be proper to give a brief notice of the origin and abolition of the *privilegium clericale*. There can be little doubt the benefit of clergy originated in the great power and influence of the priesthood, during the dark ages, when both the people and their rulers were disposed to treat with peculiar favour and honour the ministers of religion; and, in consequence of which, they obtained two extraordinary and exclusive privileges:—1. Places consecrated to religious solemnities were exempt from criminal arrests, which was the foundation of sanctuaries. 2. The persons of clergymen were exempt, in certain cases, from criminal process before the secular judge, and made amenable only to ecclesiastical censure and jurisdiction. The *first* of these immunities was much abridged by 29 H. 8, and finally abolished by 21 J. 1, c. 22. The *second*, after undergoing various mutations, descended to our own time, and was only abolished by 7 & 8 G. 4, c. 28, s. 6. Originally the benefit of clergy was confined to spiritual persons, actually admitted into holy orders, and wearing the clerical tonsure; but, in process of time, the privilege was extended to every one who could read. When education became more diffused, by the discovery of printing, and other concurrent causes, reading was deemed an incompetent proof of clerkship, or being in holy orders; readers, therefore, were excluded from the *full* benefit of clergy, though not liable to the same severity of punishment, in case of delinquency, as non-readers,—the totally illiterate. Afterwards, it was properly considered that education and learning are no extenuation of guilt, but the reverse; and that if the punishment of death for simple felony was too severe for those who had been liberally instructed, it was much more so for the totally unlearned. Accordingly, by the 5 Anne, c. 6, it was enacted, that privilege of clergy should be granted to all who were entitled to it, without requiring them to read by way of conditional qualification. At present, no one can claim this ecclesiastical immunity; and every one guilty of felony, whether peer or commoner, layman or spiritual person, is made amenable to the same criminal procedure and responsibility.

**BEYOND SEAS.** By the 19 & 20 V. c. 97, s. 12, no port of the United Kingdom of Great Britain and Ireland, or of the Channel Islands, or the islands adjacent, being within the dominions of her majesty, is deemed to be “beyond seas” within the meaning of that act, or the 4 & 5 Anne, c. 16.

**BILL**, in parliamentary language, is the draft or outline of an intended statute. In the lords any individual peer, without the

previous permission of the house, may lay a bill on the table; but in the commons no public bill can be brought in unless a motion for leave be previously obtained. *Bill of pains and penalties* is an unusual mode of punishing by degradation or otherwise an alleged offender, by passing for the purpose an act of parliament. The mode of proceeding in passing such a bill does not vary from that adopted in regard to other bills. Bishop Atterbury was deprived of all his offices and banished for ever by a bill of pains and penalties in the reign of George I. The same mode of proceeding was attempted, and relinquished, against Queen Caroline, the wife of George IV.

**BILL OF LADING** is a memorandum signed by masters of ships, acknowledging the shipment of goods, and comprises a description thereof, and the names of the shipper, master of vessel, and person to whom they are consigned. See further, p. 350.

**BILLINGSGATE MARKET** is to be kept every day, and the toll is regulated by statute. All persons buying fish in this market may sell the same in any other market by retail, but only fishmongers can sell it in shops. Persons buying at this market for others, and fishmongers engrossing the market, incur a penalty of £30.

**BILLS OF MORTALITY** are abstracts from parish registers, showing, as their name imports, the number that have died in any parish or place during certain periods of time, as in each week, month, or year, and are accordingly denominated weekly, monthly, or yearly bills. They also include the number of baptisms during the same period, and generally those of marriages. The *London Bills of Mortality* were first used in the year 1562, and from 1603 have been kept in regular series. They were intended to afford timely notice of the plague, and, in addition to the number of christenings and burials, exhibit the diseases occasioning death in each parish: but are very defective; the births and deaths of Dissenters are excluded, and the description of diseases, from the reports of the searchers, is inaccurate and unscientific. Moreover, of the 152 parishes of the metropolis, five of the larger, namely, Marylebone, Pancras, Paddington, Chelsea, and Kensington, are omitted in the bills, though usually included in acts of parliament regulating its general police and government.

**BLACK MAIL**, an ancient composition in money or provisions, paid by the inhabitants of the northern counties, to protect them from the ravages of the border robbers, called moss troopers.

**BLACK ROD**, *the gentleman usher of the*, has his name from the black rod, on the top whereof sits a lion in gold, which he carries in his hand. He has the keeping of the chapter-house door, when a chapter of the order of the garter is sitting; and in the time of a parliamentary session, he attends on the house

of lords. He is appointed by letters patent from the crown, and his deputy is styled the yeoman usher. They are the official messengers of the lords, and either the gentleman or yeoman usher summons the house of commons to the lords, when the royal assent is given to bills. They execute orders for the commitment of offenders, and assist at the introduction of peers and other ceremonies.

BOARD, used to denote in their collective capacity the officers of some administrative department: as the Board of Control, or the Board of Trade. *Bureau* in France is an equivalent term.

BOILING TO DEATH, a punishment awarded by the 22 H. 8, c. 9, for persons convicted of killing by *poisoning*. The preamble to the statute states, that one John Roose, a cook, had been lately convicted of throwing poison into a large pot of broth, prepared for the Bishop of Rochester's family and the poor of the parish; and the said John Roose was, by a retrospective clause of the statute, ordered to be boiled to death. This sentence was carried into effect in Smithfield, where, eleven years after, a young woman named Mary Davies, suffered in the same manner, for a similar crime.

BOLTING, a fictitious arguing of cases in the inns of court for the purpose of training the students to legal dialectics. It is inferior to *mooting*, and may be derived from the Saxon *bolt*, a house, because done privately in the house for instruction. It is now disused, and has given way to the more substantial practice of *eating a way* to the bar by keeping commons, which, however, are not always kept.

BONA FIDE, anything done with good faith, without fraud or deceit.

BORDARS AND COTTARS formed two of the ancient divisions of Anglo-Saxon society, of which the former, in consideration of a cottage, were required to furnish poultry, eggs, and other articles of diet for the lord's table; the latter were employed in the trades of smith, carpenter, and other handicraft arts they had been instructed in at the charge of their masters. Inferior to these were the *thralls* or *servi*, principally employed in menial services about the mansion. Their lives were professedly protected by law; in other respects they were in the lowest degradation; so much so as to be considered regular articles of traffic. — *Wade's History and Political Philosophy of the Productive Classes*, 4 edit., p. 8. — *Chambers*.

BOROUGH, from the Saxon *borhoe*, signifies a corporate town, which is not a city, and also such a town as sends members to parliament. According to Brady, parliamentary boroughs were either by charter, or towns holding of the king in ancient demesne. They are also by act of parliament, as the new boroughs created in 1832, by the acts for the amendment of the

representation. The 2 & 3 V. c. 27, empowers the judges of courts of record in the municipal boroughs reformed by 5 & 6 W. 4, c. 76, to make rules for regulating the process in civil actions: such rules to be confirmed by three of the judges of the superior courts at Westminster. Courts are to be held four times yearly, and with no greater interval between the holding of any two successive courts than four calendar months. All personal actions are to be commenced by writ of summons.

BRANDING, or burning on the hand or face, was a punishment inflicted for various offences. It is abolished, and whipping or imprisonment substituted.

BREAD; the making of bread in the country is regulated by 6 & 7 W. 4, c. 37, and its provisions assimilated to 3 G. 4, c. 106, which regulates bakers in the metropolis. Bread may be made of any weight or size; but must be sold by weight only (French rolls and fancy bread excepted). Bakers to use avoirdupois weight, and no other. Penalty for using false weights, £5. Bakers delivering bread by cart, &c., to be provided with scales and weights. Bakers convicted of adulterating bread, liable to a penalty of £10, and to have their names and abodes advertised in the newspapers. Penalty for adulterating flour, meal, &c., £20. Bread made of mixed meal and flour to be marked with the letter "M." Magistrates and peace officers, by warrant, may search bakers' premises, and seize and carry away adulterated flour and meal. Penalty for obstructing search, £10. Ingredients for adulterating flour, meal, &c., being found on bakers' premises, subject the offender to a penalty of £10, and the like sum for every subsequent offence. Offences occasioned by the wilful default of journeymen bakers subject them to fine or imprisonment. Bakers not to bake bread or rolls on the Lord's-day, or sell bread, or bake pies, &c., after half-past 1 of the clock in the afternoon. Bakings may be delivered until half-past 1 o'clock, and not later, on Sundays, under the penalty of 20s. No baker, mealman, or miller, to act as a magistrate under this act, under a penalty of £100. One half of each penalty to go to the informer (and 3s. extra on Sundays for his expenses), and the other moiety to the overseer, or other parochial officer. Act does not extend to Ireland, nor the regulations as to bakings on Sundays to Scotland.

BREHON. In Ireland the judges and lawyers were anciently styled *brehons*, and the Irish law called the brehon law. It is mentioned by Spenser, in his "State of Ireland."

BREVET is the term applied to a commission, conferring on an officer a degree of rank next above that which he holds in his regiment, unaccompanied, however, with a corresponding increase of pay. Brevet rank does not exist in the navy, and in the army it neither ascends higher than the rank of lieutenant-colonel nor descends lower than that of captain.

**BRIDEWELL**, a name often given to houses of correction. In different parts of the country, houses of correction are called bridewells, from the noted hospital of St. Bride's, London, having been the first place of confinement in which penitentiary reform was a primary object.

**BRIDGE MASTERS**, of *London Bridge*, are officers chosen by the citizens, who have certain fees and profits belonging to their office, and the care of the bridge and bridge-house estates.

**BRIEF**, a summary of the client's case, made out for the instruction of counsel, wherein the case of the party ought to be *briefly*, but is often lengthily, stated. Formerly it was the practice of counsel personally to take these memoranda on their knees, as appears from Dugdale, who, speaking of St. Paul's, says, "Each lawyer and sergeant, at his pillar heard his client's cause, and took notes thereof on his *knees*, as they do at this day at Guildhall." A brief is also any writing issued out of the superior courts, commanding anything to be done in judicial cause. There is likewise a *church-brief* or *queen's-letter*, sometimes issued under the privy seal, addressed to the clergy, magistracy, and parish officers, authorising collections to be made for a specified charitable purpose.

**BROKERS**. These are a kind of middle-men, and are of several sorts. 1. Those who act as agents for the sale of commodities or of stock in the public funds, who are regulated by statute, and whose liabilities have already been described (p. 174). 2. Ship-brokers, who regulate the sale of ships, procure cargoes on freight, and adjust the terms of charter-parties. 3. Insurance-brokers negotiate between the merchant or freighter, and the underwriter or insurer, settling the terms of the insurance against loss or damage. 4. Bill-brokers, whose traffic is in bills of exchange, discounting them for the holders, or who buy, sell, and deal with merchants in respect of bills, settling to those who draw on, and buying bills of those who remit to foreign ports; from their knowledge of the rate of exchange, they fix the rate of exchange in these securities, by which merchants consider themselves bound. 5. Sharebrokers, who transact business and effect transfers in railway and canal shares, in the shares of joint-stock banks, gas, water, and other local works, which are established by a numerous body of proprietors. The sharebrokers have increased, of late years, largely in numbers, not only in London, but in all the large towns, where formerly there were scarcely any of this class. 6. Persons who appraise goods, sell or distrain furniture for rent, are called brokers, though entirely differing in their occupation from the preceding commercial agents; they must have an excise licence, and conform to the regulations mentioned, p. 173.

**BUBBLE**, a name applied to any fraudulent or deceptive joint-stock project, started with an exaggerated prospectus of com-

mercial gain, for the purpose of enriching the promoters at the expense of the credulous subscribers. It was to restrain such nefarious schemes that the *Bubble Act*, 6 G. 1, c. 18, was passed; but the difficulties in its construction caused it to be repealed by 6 G. 4, c. 91, and the projectors of bubble companies are now chiefly punishable by liability for the expenses of their devices, unless guilty of fraud or conspiracy, at common law.

**BUDGET**, the general financial statement annually made to the house of commons by the chancellor of the exchequer, comprehending a review of the income and expenditure of the past year, as compared with those of preceding years, an exposition of the intended repeal, imposition, or modification of taxes during the session, with a statement of the excess or deficiency of the public income.

**BUILDINGS**. In acts for the improvement of towns are generally introduced provisions for regulating the construction of buildings. The Building Act for the Metropolis is the 7 & 8 V. c. 84, and came into operation Jan. 1, 1845. It is mainly intended to enforce such mode of building as may prevent the spread of fires, preserve the health of the inhabitants, and interdict the construction of cellars for the abodes of the poor, unless conformable to rules specified. It may be extended to any place within 12 miles of Charing Cross. The principal officers are two official referees, a register of buildings, and surveyor. By 9 V. c. 5, an additional referee is appointed. Referees to be paid by salaries, which are not to exceed in the aggregate £3000.

**BULL**, a brief or mandate of the pope; so called from the lead or gold seal sometimes affixed thereto.

**BULL AND BOAR**. By custom of some places, the parson of the parish may be obliged to keep a bull and a boar for the use of the parishioners in consideration of his having the tithe of calves and pigs.

**BULLION**, gold or silver in ingots or bulk before it is coined, though sometimes incorrectly applied to the precious metals generally. It is imported duty free, and may be landed without report, entry, or warrant.

**BURG**, a small walled town or place of privilege. *Jacob*.

**BURGESSES** are properly the men of trade, or the inhabitants, of a borough or walled town; but the name is usually applied to the constituency of municipal authorities, and of their representatives in parliament. According to the Corporation Act, 5 & 6 W. 4, c. 76, to be a burgess qualified to vote at municipal elections, a person must be of full age, and an inhabitant householder within seven miles of the borough, and must have paid for the premises poor rates and borough rates.

**BURIAL**, in the church-yard, is the common right of every pa-

rishioner, without fee for breaking the ground : but the parson cannot be compelled to bury in a stone coffin ; nor in a family grave or vault, although he may have given permission to erect it ; for nothing save a licence from the bishop can secure to any one the unreserved right of burial in a particular spot in a church or churchyard. Persons who are dissenters, and all persons baptized, though not by *clergymen*, are entitled to Christian burial, equally with those who are baptized in the established church. Funerals are exempt from toll.

BURSAR, the cashier in collegiate and conventual bodies.

BUTTONS. By 36 G. 3, c. 60, persons putting false marks on gilt or plated buttons forfeit the same, and £5 for not exceeding twelve dozen, and at the rate of £1 for every further twelve dozen. To put other words than "*gilt*," or "*plated*," on metal buttons, incurs forfeiture, with a penalty of £5 for any quantity exceeding one dozen. But the words *double* and *treble gilt* may be marked on metal buttons, if they are so in fact. The penalties, half to the poor, half to the informer. The act does not extend to buttons made of mixed metal, or Bath, or white metal buttons, inlaid with steel or set in shells.

BY-LAW is a private law made by those duly authorized by charter, custom, or prescription, for the conservation of order and good government in some place, corporation, or jurisdiction. A by-law by a corporation may inflict a penalty, recoverable by distress or action of debt. But it cannot be made with a penalty of imprisonment, or forfeiture of goods and chattels. All by-laws are to be reasonable ; and ought to be for the common benefit, and not the private advantage of any particular persons, and must be consonant to the public statutes, as subordinate to them. Under the Municipal Corporation Act, by-laws for the prevention of nuisances, and imposing a penalty not exceeding £5, may be made with the consent of two-thirds of the town-council.

## C.

CADET, the younger son of a gentleman ; it is also applied to a student in a military academy, and to a volunteer in the army waiting for a commission.

CALENDAR is a table of the days of the year, arranged to assist the division of time, and to indicate the days apportioned to religion, business, or the anniversary of memorable events. It is derived from the Romans, who called the first days of each month *calends*, from a word which signified called ; because the pontiffs, on these days, called the people together, to apprise them of the days of festival in that month. *Calendar months* are the twelve months in the year, consisting of thirty or thirty-

one days each, except February, which has twenty-eight, and in leap year twenty-nine days. See *Month and Year*.

**CALLING THE PLAINTIFF** is the ceremony which takes place when the plaintiff is *nonsuited*. It is usual for a plaintiff, when he or his counsel perceive that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or withdraw himself, upon which the crier is ordered to *call the plaintiff*; and if neither he nor any one for him appears, he is nonsuited, the jurors are discharged, and the action is at an end, and the defendant recovers costs. A nonsuit, however, is not, like a verdict, a bar to another action, when the plaintiff can get better proof.

**CAMBRIDGE UNIVERSITY.** The reform of this foundation was partly on the model of that applied two years previously to the university of Oxford. The 19 & 20 V. c. 88, states it to be expedient for the advancement of "religion and learning" to enlarge the powers of making statutes and regulations now possessed by the university of Cambridge and its colleges; and to make provisions for the government and extension of the same, for the abrogation of oaths, and for maintaining and improving discipline and studies. For these purposes commissioners are appointed, three of whom are to be a quorum, and whose powers are to be in force until January, 1859, or, if the crown think fit, one year longer. Commissioners empowered to require the production of documents and accounts, and no oath taken by any officer to be a bar to their authority. By s. 5, in place of the *Caput Senatus*, on November 7, 1856, a Council of the Senate is to be elected, to prepare all graces to be offered to the senate, whether from individual members of the senate or from syndicates, and no grace to be offered without the sanction of a majority of the council. The council to consist of the chancellor, vice-chancellor, four heads of colleges, four professors of the university, and eight other members of the senate, to be chosen from the electoral roll; but not to be more than two members of the same college among the eight elected members. The vice-chancellor, on or before October 13, 1856, and also on or before the second Monday in October in every year, is to promulgate a list of the members of the senate who have resided within one mile and a half of St. Mary's Church for fourteen weeks at the least between the first day of the preceding Michaelmas term and October 1st; and such list, together with all officers of the university being members of the senate, the heads of houses, the professors, and the public examiners, to be the Electoral Roll of the university for the purposes of the act. Sections 8 to 13 relate to the vacations of seats by members, to the filling up casual vacancies, and the mode of electing the council. A member of council becoming vice-chancellor does not vacate; and no professor is ineligible by reason of any sta-



tute of his foundation. The council to meet for the despatch of business, Nov. 8, 1856; the chancellor, vice-chancellor, or his deputy, to be chairman, or, in their absence, the members present to choose a chairman, s. 19. Five members to be a quorum, and questions to be decided by a majority. Oaths binding the juror not to disclose any matter pertaining to his college, or to resist or not concur in any change therein, declared to be illegal from the passing of the act, July 29, 1856. By s. 23, power is given to the vice-chancellor, conformable to regulations hereafter to be made, to *license* members of the university to open their residences, if within a mile and a half of St. Mary's Church, for the reception of students, who may be matriculated, and admitted to all the privileges of the university. Every person to whom such licence is granted to be called a principal, and his residence, so opened, a hostel. Before Jan. 1, 1858, the university to proceed to frame statutes for fixing the conditions of granting licences for the regulation of hostels, and their principals; and if the university omit to frame such statutes within the period mentioned, it is made incumbent on the commissioners to frame them, ss. 25, 26. Governing body of any college, or the major part of them, empowered to frame statutes of reform prior to Jan. 1, 1858. Power given to colleges to sever benefices annexed to their headships. Colleges omitting to frame reform statutes, it is made incumbent on the commissioners to do so. The council of the senate may frame new statutes, but such statutes to be submitted to the senate for their adoption or rejection; and no statute framed either by the council or colleges to have effect unless assented to by the commissioners. Commissioners may frame university statutes, but before submission for the assent of the crown, they must be submitted to the council of the senate, s. 36. Right of preference belonging to certain schools to any college emoluments not to be abolished if governors of schools or Charity Commissioners dissent, s. 33. Statutes framed by commissioners, if objected to by the governing bodies of the colleges or schools, to be laid before parliament. The college of Henry VI., of Eton, made subject to the act. By s. 45, no person shall be required on matriculating, or taking a degree in *arts, law, medicine, or music*, to take any oath, make any declaration or subscription whatever; but *such degree* not to entitle any one to be a member of the senate, or to constitute a qualification for holding any office either in the university or elsewhere, unless the person who has obtained the degree shall subscribe a declaration that he is a *bonâ fide* member of the Church of England. Stamp duties on degrees and matriculations to be abolished as soon as a substitute, satisfactory to the Treasury, can be found for them by the university.

CAMPUS MARI, formerly an assembly of the people every

year upon May-day, when they confederated to defend the country against foreigners and all enemies.

**CANDLE, *sale by inch of***, in which a piece of wax candle, about an inch long, is burning, and the last bidder when the candle goes out is the buyer of the goods exposed to sale.

**CANDLEMAS-DAY**, the anniversary festival of the purification of Mary the mother of Christ, on the 2nd of February. It was celebrated in the Christian churches with an abundance of lights, and hence was called *Candlemas-day*, as well as the Day of Purification. The practice of illuminating the churches ceased in this country in the second year of Edward VI. It is a *dies non* in the courts, no judge sitting on that day.

**CANON LAW** is a body of Roman ecclesiastical law, relative to matters over which that church assumed to have jurisdiction. It is compiled from the opinions of the fathers, the decrees of general councils, and the decretal epistles and bulls of the Holy See. At the period of the Reformation it was enacted by 25 Hen. 8, confirmed by 1 Eliz. c. 1, that a *review* should be had of the canon law, and till such review the canon law already in being, and not repugnant to the law of the land, or the royal prerogatives, should continue in force; as no such review has yet been made, on these statutes depends the authority of the canon law in England. With respect to the canons enacted by the clergy, under James I., in the year 1603, they clearly do not bind the *laity*, never having been confirmed by parliament, though the clergy are bound by the canons confirmed by the king only.

**CAPIAS**, the prenomens to several kinds of writ, issued either before or after judgment, and derived from the operative Latin word *that you take*. It is no longer, however, used in commencing personal actions, a writ of summons having been substituted for the *capias* in the superior courts at Westminster.

**CAPITE, *tenants in***, a common mode of tenure under the feudal domination, whereby a man held lands of the king, either by knight's service or in socage. It is abolished by 12 Car. 2, c. 24, and all tenures in *capite* turned into free and common socage.

**CARACT** is the twenty-fourth part of an ounce, or any other quantity of metal. The fineness of gold is usually estimated in caracts; thus, if twenty-two caracts of pure gold and two of alloy be mixed together, it is said to be twenty-two caracts fine.

**CARDS AND DICE**. The stamp duties on cards and dice made in the United Kingdom, and the penalties for their evasion, are regulated by 9 G. 4, c. 18; under which it is provided, that an annual licence duty of 5s. shall be paid by every maker of playing cards and dice. The duty on every pack of cards to be 1s., and to be denoted on the ace of spades. Every pair of dice to pay a duty of £1. All pieces of ivory, bone, or other material

used in any game, with letters, figures, spots, or other marks, denoting any chance, to be *adjudged dice*, and if more than six chances are signified on any one piece, then such piece to be charged with the full duty of a pair of dice. Cards and dice are not to be made in any part of Great Britain, except the metropolis: nor in Ireland, except in Dublin and Cork: penalty £100. Cards and dice to be enclosed in wrappers with such marks or device as the commissioners of stamps may appoint. Before licence can be had, bond must be given to the amount of £500 for the payment of the duties, &c. Selling or exposing to sale any pack of cards not duly stamped, subjects, if a licensed maker, to a penalty of £50; if not a licensed maker, £10. Any person *having in his possession, or using, or permitting to be used*, any pack of cards or dice not duly stamped, to forfeit £5. A like penalty is imposed for selling waste cards, unless the corners be cut off and sold in parcels without cover or wrapper. Second-hand cards may be sold by any person, if sold without the wrapper, or *jew*, of a licensed maker, and in packs containing not more than fifty-two cards, including an ace of spades duly stamped, and enclosed in a wrapper with the words "*Second-hand Cards*" printed or written in distinct characters on the outside; penalty for selling second-hand cards in any other manner, £20.

**CASTLE.** In the time of Henry II. there were in England 1115 castles, and every castle had a manor annexed; during the civil wars these castles were demolished, so that generally there remain only the ruins of them at this day.

**CASUS OMISSUS**, implying that something is omitted, or not provided against by statute.

**CATHEDRAL**, the church of the bishop, where the service is performed with greater ceremony.

**CAVEAT**, a process entered in the spiritual courts to restrain the institution of a clerk to a benefice, or a probate of a will, &c.

**CAPI CORPUS** is a return made by the sheriff upon a *capias* or other process, that he has taken the party.

**CERTIORARI** is an original writ issuing out of Chancery, the Queen's Bench, or other courts at Westminster, directed in the queen's name to the judges or officers of inferior courts, commanding them to return the record of a cause or matter depending before them, to the end the party may have the more sure and speedy justice before her, or such other justices as she shall assign to determine the cause. This writ is only grantable on matters of law, and cannot be had to remove causes after issue is joined.

**CESTUI QUE VIE** is he for whose life any lands or tenements are granted.

**CHAFFERS**, wares or merchandize; *chaffering* is yet used for tedious bargaining, and is mentioned 3 Edw. 4, c. 4.

**CHAMBERLAIN**, *lord*, an officer of the royal household, who has control over the queen's chamber, the wardrobe, the chaplains, physicians, comedians, &c. The *Chamberlain of London* is commonly the receiver of the city rents, payable into the chamber, and has great authority in determining the rights of freemen, apprentices, and orphans.

**CHAMBERS OF THE KING**: the havens or ports of the kingdom are so called in ancient records.

**CHAMPION OF THE KING**, an ancient officer, whose office it is at the coronation, when the king is at dinner, to ride armed, *cap-a-pie*, into Westminster Hall, and by the proclamation of a herald make a challenge, that if any man shall deny the king's title to the crown, he is there ready to defend it in single combat; this done, the king drinks to him, and sends him a gilt cup, with a cover, full of wine, which the champion drinks, and has the cup for his fee. The championship, since the coronation of Richard II., when Baldwin Greville exhibited his petition for it, was adjudged from him to Sir John Dymocke, his competitor (both claiming from Marmion), and has continued since in the family of the Dymockes, who hold the manor of Scrivelsby, in Lincolnshire, hereditary from the Marmions, by grand sergentry, that the lord thereof shall be the king's champion. Accordingly, a Dymocke performed the office at the coronation of George III. and of George IV.; but the show was omitted at the coronation of William IV. and Queen Victoria.

**CHANCE-MEDLEY**. Where death is caused unintentionally, and not through negligence or wantonness, it is called chance-medley.

**CHANCELLOR OF A DIOCESE** is an ecclesiastical and judicial officer under the bishop, including the power both of an official principal and vicar-general. *Chancellor of the duchy of Lancaster* is the chief judge of the duchy court.

**CHANCERY**. It is the opinion of Caunden and Cowel that this great *officina justitiæ* derived its name from bars laid one over another crosswise, like lattice, with which it was environed to keep off the press of people, and not hinder the view of the officers who sat therein; such grates, or cross-bars, being called *cancelli*. Dr. Johnson seems, also, inclined to this derivation; and, indeed, it appears the most reasonable, for we have also the word "chancel" which signifies that part of the church formerly *barred* off from the body of it. From the erudite researches of Lord Campbell, the office of Lord Chancellor seems to be as ancient almost as the monarchy itself, though humble and obscure in origin. Indeed, what king could do without his chancellor—that is, his clerk or secretary—to write and perhaps indite as well as read his despatches for him? For many centuries, the chancellors, like most state functionaries, were ecclesiastics, and an office so confidential and near the

royal person could not fail to grow in importance ; so that the king's clerk, like the clerk of humbler personages, gradually enlarged his powers, and from chief scribe and reader became the confidential adviser and keeper of the conscience of his sovereign. From merely affixing the king's seal to judicial writs or mandates, he became himself a potent judge, sitting in the *Aula Regia* as its chief legal director ; or in the marble chair of Westminster Hall, with a great marble table before him, covered with writs and charters, waiting to be sealed in his presence with the great seal of England. Sir T. More, in the quaint style of his time, gives, in two lines, a description of the matters which may be relieved in equity--

“ Three things are to be helpt in conscience,  
Fraud, Accident, and things of Confidence.”

CHAPLAIN, a spiritual person, retained by the king, a nobleman, or some official personage, to perform divine service in his household. The king, queen, and royal family may retain as many chaplains as they please ; but, with respect to other persons, they are limited by statute. Chaplains so retained enjoy peculiar privileges, as to non-residence, and holding a plurality of livings ; but no chaplain is entitled to these privileges unless he be retained by letters testimonial under hand and seal.

CHAPTER is an assembly of clergyman, consisting of prebends and canons under the dean in a cathedral church.

CHARITIES. The sovereign, as *parens patriæ*, is the guardian of all charities, and the attorney-general, at the relation of an informant, may file an information in the Court of Chancery to restore any abused or dilapidated foundation. The 16 & 17 V. c. 137, provides means for securing a due administration in certain cases of *Charitable Trusts*, and for the more beneficial application of charitable funds, by empowering the crown to appoint four commissioners, one secretary, and two inspectors for these purposes. Powers of commission, “as they in their discretion may think fit,” to inquire by their inspectors into all charities, their nature and objects, management, and results thereof ; the value and condition of estates, funds, and incomes. Inspectors may examine witnesses on oath. Board may sanction building leases, working mines, reforms, improvements, or, in special cases, order sale or exchange of estates, or redemption of rent-charges, s. 25. By s. 28, where the appointment or removal of a trustee, or any other relief, order, or direction is desirable relating to any charity, of which the gross annual income exceeds £30, the Master of the Rolls and Vice-Chancellor, upon application to them at chambers, to have the same jurisdiction as the Lord Chancellor has upon informations, &c., under the 15 & 16 V. c. 80. In the city of London, the provision as to charities exceeding £30 to extend to charities not

exceeding £30, s. 80. By s. 32, district courts of bankruptcy and county courts have jurisdiction in cases of charities, the incomes of which do not exceed £30, but the *deputy* sitting for county court judge not to exercise jurisdiction, s. 33. Order of district or county court for removal of a trustee or approval of scheme not valid till countersigned by the board. Reservation of the rights of the Church of England; and the act does not extend to the universities, or to charities partly supported by voluntary contributions. Charities applicable exclusively to the benefit of Roman Catholics were exempt from the act for two years, and this term is extended by 19 & 20 V. c. 76, to Sept. 1, 1857.

CHARTA, the ancient word for a deed or a statute.

CHARTER, a royal grant or privilege.

CHILDWIT, under the feudal system, a fine or penalty on a bondswoman, begotten with child without consent of the lord. The term is not yet obsolete in some parts of Essex.

CHIMNEY-SWEEPER. By 3 & 4 V. c. 85, to compel or knowingly to allow any person under the age of twenty-one years to ascend or descend a chimney or enter a flue for the purpose of cleaning or curing it, or for extinguishing a fire therein, subjects to a penalty of £10, or not less than £5. No child can be apprenticed to the trade under the age of sixteen years, and current indentures of children under sixteen may be cancelled. The act prescribes the construction of chimneys, subjecting builders to penalties for neglect. Under 4 & 5 W. 4, c. 35, *hawking* or calling in the street is prohibited, and the ill-treatment of apprentices made liable to a penalty between £2 and £10.

CHOSE, in French, signifies a thing; and a *chose in action* is a thing of which a man has not the possession or actual enjoyment, but floating or pending, and which he can claim by action at law.

CHURCH is a building consecrated to the service of religion, and anciently dedicated to some saint whose name it assumed; and if it has the administration of the sacraments and of the rites of burial, it is in law adjudged a church. The term is also applied to a body of persons, united by the profession of the same Christian faith. The *Church of England*, is that church recognized by the State, and endowed, and comprising, in its doctrine and discipline, the national faith. The laws and constitutions which govern the Church of England, are,—1. Divers immemorial customs. 2. Provincial constitutions, and the canons made in convocations, especially those in the year 1603. 3. Statutes, or acts of parliament concerning the affairs of religion, or causes of ecclesiastical cognizance, particularly the rubrics in the Common Prayer Book, founded upon the Statute of Uniformity. Lastly, the Articles of Religion, drawn

up in the year 1562, and established by 13 Eliz. c. 12. No person can succeed to the British crown who shall not join in communion with the Church of England, as by law established. By the coronation oath the sovereign is bound to maintain the protestant or reformed church established by law, and to preserve to the bishops and clergy all rights and privileges as by law do or shall pertain to them.—*Church Building Act*. By 58 G. 3, c. 45, commissioners under this act are empowered to grant money for the building of churches in parishes or extra-parochial places in which there is a population of not less than 4000 persons, and in which there is not accommodation in the churches and chapels of the establishment already erected for more than one-fourth part of that number, or where there are 1000 persons situated more than four miles distant from such places of worship; and also to make advances in places where the inhabitants are able to bear part of the expense of such erections, and to pay such advances by instalments. The interest of these loans and a sinking-fund, to the amount of one-twentieth part of the principal, to be charged on the church-rate. But the 59 G. 3, c. 134, requires that no application to build or enlarge any church or chapel, either wholly or in part, shall be made by means of rates upon the parish, in any case in which one-third part or more in value (such third part to be ascertained by the average rate for the relief of the poor for the three preceding years) shall dissent therefrom. A rate, however, not exceeding 1s. in the pound in any *one year*, or 5s. *in the whole*, upon the annual value of the property in the parish, may be raised for building or enlarging a church or chapel by two-thirds of the persons exercising the powers of vestry in the parish, and of which vestry meeting notice has been given upon two successive Sundays preceding, and this notwithstanding the dissent of one-third of the rate-payers. By 9 G. 4, c. 42, the practice of raising money by *church-briefs*, under authority of 4 Anne, c. 14, is abolished; and all voluntary contributions collected by letters patent for the purpose of building and enlarging churches are to be applied by the Church-Building Commission. But by 19 & 20 V. c. 55, the powers of this commission are, after Jan. 1, 1857, transferred to the Ecclesiastical Commissioners of England.

**CHURCH RATES.** Rates assessed for the repair of parochial churches, by the parishioners in vestry assembled. The reparation of the body of the church belongs to the parishioners, and the power of taxing themselves for that purpose is vested solely in them. The churchwardens, as such, have no power to impose a church-rate; but if they give notice of a vestry for that purpose, and if no other parishioners attend, they may alone make and assess the rate. It has been decided that it is incumbent on a parish to impose a rate for the main-

tenance of the church ; but as the payment can only be enforced by ecclesiastical censures, it may be resisted with impunity : and since the Braintree case, such has been the result in many parishes.

**CHURL**, in the Saxon times, was a tenant at will, but of free condition.

**CINQUE PORTS** are Dover, Sandwich, Romney, Winchelsea, and Rye ; and to these may be added Hythe and Hastings. They are under the government of a lord-warden, and, prior to the continuance of the Duke of Wellington in the office, the wardenship was usually an adjunct of the premiership. The cinque ports enjoy various privileges as to pilotage, the issuing of writs, and other judicial matters. They are supposed, by Schultes, to have been incorporated previous to the Conquest, by the grant of privileges made to the barons (freemen) by Edward the Confessor.

**CIRCUITS**. England and Wales, with the exception of Middlesex, are, for judicial purposes, divided into circuits, which the fifteen judges visit twice or thrice a year, in pairs, to adjudge civil and criminal charges. The criminal charges for the county of Middlesex, and city of London and parts adjacent, are adjudged at sessions which are held monthly at the Central Criminal Court ; and the judges of the superior courts sit during term for the adjudication of civil cases only in Westminster-hall, and, before and after term, in the Guildhall of the city of London. The lord chancellor and vice-chancellors, also, sit out of term at Lincoln's Inn.

**CITY**, a term introduced about the period of the Conquest, and not limited, as Blackstone conjectured, to episcopal towns. It appears to be derived from *civitas*, and applied to *all* towns of eminence, signifying that they were places subject to municipal government. Long after the Conquest, city is used synonymously with burgh, as appears in the charter of Leicester, it being called both *civitas* and *burgus*, which shows the commentator is mistaken in confining the term to a town which "either is or hath been the see of a bishop." But, on this point, Mr. Woodeson, the Vincian professor, has adduced a decisive authority. It is that of Ingulphus, who relates, that at the great council assembled in 1072, to settle the claims of two archbishops, it was decreed, that bishops' sees should be transferred from *towns* to *cities*.

**CIVIL LAW** is the municipal law of the Romans, comprised in the code, the pandects, or digests, the institutes, and the novels, or authorities. It is allowed, under certain restrictions, to be used in the ecclesiastical, military, and admiralty courts, and in the courts of the two universities.

**CIVIL LIST**. Since the revolution of 1688, it has been the practice, at the commencement of a new reign, to enter into a



specific arrangement with the sovereign, by which the ancient hereditary revenues of the crown are placed at the disposal of parliament in exchange for an equivalent annuity for life. The annual sum so granted in lieu of the crown revenues is denominated the *civil list*, which is yearly set apart from the general revenue of the kingdom for the personal maintenance of her majesty, and to support the honour and dignity of the crown. The sum so granted by 1 V. c. 2, amounts to £385,000, to be applied as follows:—For her majesty's privy purse, £60,000; salaries for the household and retired allowances, £131,260; expenses of the household, £172,500; royal bounty, alms, and special services, £13,200; pensions to the extent of £1200 per annum; unappropriated monies, £8040. The reduction in the income of the queen below that of her predecessors, has been effected by the transfer of various charges heretofore paid out of the civil list to the consolidated fund.

**CLEAR DAYS.** In a lawsuit there are several steps in the proceedings which must be taken within a specified number of clear days. In reckoning these days, the day on which the process is served, and the day of hearing, are not counted.

**CLERK** is, strictly, a person in holy orders, but it is now generally applied to any person whose chief occupation is writing, in a court of law or elsewhere. Officers in courts of law were, formerly, often clergymen; and hence, to this day, their successors are denominated clerks. Kings were anciently called clerks, *Dav. 4.* In *Moss v. Hearyside*, a clerk in a mercantile house, described in the notice of justification by the addition of "gentleman," was rejected, from inaccurate description, as bail. Clerks are a superior sort of servants, and the customary rule in domestic service of a month's wages or a month's notice does not apply to them. It does not appear settled what warning they are entitled to; Mr. Chitty suggests a quarter's notice on either side would be probably deemed sufficient.

**CLERK OF THE ASSIZE** is he that records all things judicially done by the judges of the circuits.

**CLERK OF THE PEACE.** An officer belonging to the quarter sessions, whose duties are to read the indictments, enrol the proceedings, draw the processes, and transact other business incident to the quarter sessions.

**CLERK OF THE PARLIAMENT ROLLS** is the name of an officer in each house of parliament, who records proceedings in parliament, and engrosses them on parliament rolls, for their better preservation.

**CLUB-HOUSES**, in London, are associations to which individuals subscribe for purposes of mutual entertainment and convenience, the affairs of which are usually conducted by a steward or secretary, who acts under the immediate superintendence of a committee. It is now settled, *Flemming v. Hector*, that they

have no legal character similar to commercial partnerships or joint-stock companies, and that the members of such societies are not liable for the acts of their secretaries, stewards, or committees.

**COALS.** These may be exported free of duty in any English ship; and the duty on all descriptions of coal exported in foreign ships is reduced to 4s. per ton. The 1 & 2 W. 4, c. 76, regulates the vend and delivery of coals in London and Westminster, and parts of the counties of Middlesex, Surrey, Kent, Essex, Hertfordshire, Buckinghamshire, and Berkshire. All coals sold from any vessel within the port of London, or at any place within twenty-five miles of the General Post Office, to be sold by *weight*, not by measure. Selling one sort of coals for another subjects to a penalty of £10 for every ton sold, and so in proportion for any smaller quantity: but the penalty not to be levied for any greater quantity than 25 tons. With every quantity of coals exceeding 560lbs. the seller must send a *ticket*, informing the buyer of the quantity and sort of coals sent, the weight in each sack, and that he is authorized, if he think fit, to require the carman to weigh, gratuitously, in the weighing machine the carman brings, the whole or any sack of such coals; penalty on the carman refusing or obstructing such weighing, not exceeding £20. Seller or carman not delivering the ticket to the purchaser or his servant, to forfeit not exceeding £20; but coals may be delivered at the coal market without ticket. Coals sold in any quantity exceeding 560lbs. to be delivered in sacks of 112 or 224lbs. net, except coals delivered in *bulk*, or by gang labour. Coals may be delivered in *bulk*, if the buyer thinks fit; but if the quantity exceed 560lbs., they must be first weighed; or the buyer may have them weighed at any public weighing machine not distant more than 100 yards from the line of road; penalty on carman refusing to weigh, not exceeding £10. For any weight less than the ticket expresses, a penalty not exceeding £10; if deficiency exceeds 224lbs., penalty not exceeding £50. Carman carrying coals *for sale* or delivery, to have a weighing machine marked at Guildhall; penalty on carman not more than £10, and on the seller or dealer not more than £20. Buyer may require carman to weigh any sack of coals; refusing so to do, or driving away, penalty not less than £5, nor exceeding £25. Buyers may procure the attendance of a constable, to see coals re-weighed. Coals sold in any quantity less than 560lbs. to be weighed; they may be also weighed in presence of buyer. Coals delivered in a quantity exceeding 560lbs. without previous weighing, subjects to a penalty not exceeding £5. Weighing machines to be kept at watch-houses and police-stations; overseers neglecting to provide or keep them in repair, after notice, forfeit not exceeding £10. Certificate of the quality of coals to be given by the

fitter, and registered at the coal market on the arrival of the ship. All fines and penalties under £25 must be sued for within one calendar month, and are recoverable before any magistrate of the district where the offence was committed. Penalties above £25 recoverable, within three calendar months, by action or information, in any of the courts recorded at Westminster. Penalties incurred by carmen may be recovered from their employers, who may recover them back from their carmen. This act is continued by 8 & 9 V. c. 101, to 1862, and the duties extended to coals brought by railway, within the metropolitan limits, except as to coals not exceeding 500 tons, used in one year by the engines. For the opening of poor and densely-populated districts in the metropolis, and for keeping open spaces in the vicinity, as a means of public convenience, health, and recreation, it is provided that the one penny per ton duty on coal be applied to these purposes of metropolitan improvements with the sanction of parliament.

The metropolitan coal acts were amended in 1851, by 14 & 15 V. c. 116. Certificate of the quantity and quality of sea-borne coals is to be given by the fitter, and registered at the coal market on the arrival of the ship. Consignee of coals brought by barge or waggon to enter a certificate within 48 hours after their arrival, under penalty not exceeding £100. Corporation of London may appoint collector to receive duties brought by canal or inland navigation. Railways within the London district to pay duties weekly, and canal companies to make monthly returns of coals brought. Corporation may appoint inspectors of coal traffic on canals and railways, with power to inspect books; penalty on companies refusing such inspection, not above £100. Companies may be required by the corporation within seven days to erect, for the use of inspector, box or station place, at a spot distant twenty miles from General Post Office, such distance to be marked on the line of canal or railway, or on any turnpike or public road. If coals exceed weight mentioned in certificate to the extent of 5lbs. in 100lbs., additional duty of 3d. per ton to be levied, besides penalty of £100. From October 1, 1851, a *drawback* of 12d. per ton to be allowed on sea-borne coals, taken without previous landing, beyond 20 miles from General Post Office by ship or canal, or to be exported coastwise, or to foreign parts. Like drawback on coals brought by inland navigation, and taken beyond 20 miles from the Post Office by railway or by canal. Like drawback on coals brought by railway, and taken beyond 20 miles by canal. All coals brought by railway within the London district, and conveyed beyond the district by railway, to be *exempt from duty*. Corporation may allow a drawback of 12d. per ton on coke. Drawbacks not to be allowed in any case, unless for a quantity exceeding 20 tons. Certificates to be given by persons receiving

transported coals beyond the London' district. For expense of executing the act, 1*l.* per ton may be levied upon every ton on which drawback has been allowed. Lightermen employed to carry coals to any vessel or railway, not delivering the whole of such coals, liable to a penalty not exceeding £100.

COCKET, a seal belonging to the Custom-house, or rather a scroll of parchment, sealed, and delivered by the officers of the customs to merchants, as a warrant that their merchandise is customed.

COGNOVIT ACTIONEM is where a defendant confesses the cause of action to be just; upon which judgment may be entered up, and execution levied according to the terms therein agreed upon by the parties.

COIF, a slip of lawn which sergeants-at-law wear on their heads when created.

COIN is so called from having been originally square, with corners, and not round, as it now is.

COLLATION OF A BENEFICE, is the presentation to a benefice, by the bishop, when he has the right of patronage.

COLLEGE, a corporation, company, or society, having certain privileges by licence of the king; such as the colleges at Oxford and Cambridge.

COLLEGIATE CHURCH consists of a dean or other head or secular priests, as canons or prebendaries; such as Westminster, Windsor, and Southwell.

COLLISION OF VESSELS. It is a general rule that the law imposes upon the vessel having the wind free, the obligation of taking proper measures to avoid running foul of a vessel that is close hauled; and, in an action for collision, it must show that it has done so, otherwise the owners are liable for damages. *Steam-vessels* are considered more under command than a *sailing-vessel*, in consequence the onus imposed on the former, to avoid collision, is greater. It seems, according to Mr. Chitty, that usually steam-boats should go to the starboard; whilst the general rule of navigation is, that when other ships are crossing each other in opposite directions, and there is the least doubt of their going clear, the ship on the starboard tack is to persevere in her course, while that on the larboard is to bear up, or keep more away from the wind. In tidal rivers vessels moving against the tide keep near shore for the least resistance, while vessels, with the tide, keep the middle of the stream for the greatest impulsive force. Suits for compensation, in cases of loss from collision, may be prosecuted either by action at law, or in the Court of Admiralty. When it is doubtful which vessel was to blame, there is an advantage in proceeding in the Admiralty Court; because, if it should appear that the navigators of both the ships were equally to blame, but that one only was materially damaged, this court has power to decree that the

owners of each vessel shall make good a moiety of the entire damage; whereas in a court of ordinary jurisdiction, when the mischief has been the result of the joint neglect of both parties, neither could recover any compensation from the other.

**COLONIES.** These are establishments in foreign countries, obtained by cession or conquest, or originally founded by the State, or individuals who voluntarily emigrate from, or are compulsorily, in virtue of a judicial sentence, sent abroad by the mother country. England appears to have been the first and long the only European kingdom that established penal colonies for the reception of criminals. The colonies of the empire are 44 in number; and Van Diemen's Island and Western Australia are the sole remaining convict settlements; the principal other colonies are the Canadas, Nova Scotia, and New Brunswick, in North America; in the West Indies, Jamaica, Barbadoes, Antigua, Grenada, St. Lucia, and Trinidad, exclusive of Demerara and Berbice in South America. Britain has also settlements elsewhere, as Australia, Port Lewis, Columbo, Cape of Good Hope, Mauritius, Van Diemen's Land, New Zealand, and some others, exclusive of her extensive dependencies in the East Indies. The English law is not necessarily in force in the colonies. Where a country, which was previously under a settled government, accrues to the crown by cession or conquest, only such parts of the English law are in force there as have either been specifically introduced by statute, or can be shown by a course of decisions to have been acted on in such country, *Campbell v. Hale*, Cowp. 204. By 12 & 13 V. c. 96, all persons charged in any colony with offences committed on the sea may be dealt with in the same manner as if the offences had been committed on waters within the local jurisdiction of the courts of the colony; and shall receive the same punishment as on convictions for like offences in England.

**COMMENDAM.** When a beneficed clergyman is promoted to a bishopric, he vacates his benefice by the promotion; but if the king, by special dispensation, give him power to retain his benefice, he is said to hold it *in commendam*. Future grants in commendam are abolished by 6 & 7 W. 4, c. 77.

**COMMONS**, or common lands, are lands in a state of nature or waste, of which individuals have not the severalty. Commonable lands are those lands which, during a part of the year, are in severalty; that is, occupied severally by individuals as their own, to the exclusion, for the time, of other people. *See Commons*, p. 296.

**COMPURGATOR**, one who, by oath, justifies another's innocence.

**CONGE D'ELIRE** is the queen's licence to the dean and chapter to *elect* (one before *elected* by the premier) a new bishop when the see is vacant.

**CONJUGAL RIGHTS**, *a suit for restitution of*, is where either

the husband or wife, without legal cause, lives separately from the other, in which case the ecclesiastical courts will compel them to come together, if either party, as Blackstone remarks, be weak enough to desire it, contrary to the other's inclination.

**CONSISTORY**, an ecclesiastical court, held in the nave of the cathedral, or in some chapel, aisle or portico belonging to it, in which the bishop presided, with some of his clergy for assistants. It is now held by the bishop's chancellor, or other official, for determining matters of spiritual cognizance. The consistory courts grant probates of wills for chattels within their jurisdiction; but if the deceased has left property in two dioceses, the probate is granted by the prerogative court of the province.

**CONSUL**, in law-books, means an earl; it is now used for an officer appointed by the Government to reside abroad, to watch over the interests of merchants, and assist, by advice and protection, travellers belonging to the country from which he derives his appointment.

**CONTINGENT LEGACY**. If a legacy be left to any one when he attain or if he attain the age of twenty-one years, it is contingent; and if he die before that time it is lapsed. *Contingent Remainder* is when an estate in remainder is limited to take effect either to an uncertain person, or upon an uncertain event; so that the intermediate estate may chance to be determined; and the remainder never take effect. *Contingent Use* is a use limited in a conveyance of land, which may or may not happen to vest according to the contingency expressed in the limitation of such use.

**CONVENTICLE**, a private assembly, or meeting, for the exercise of religion.

**CONVENTION PARLIAMENT**, the lords and commons who met without the assent of the sovereign on the abdication of James II., and settled the Prince of Orange on the throne.

**CONVEYANCE**, a deed by which the property in lands and tenements is conveyed from one person to another. A conveyance of some advantage or right issuing out of land is styled a *grant*, as a grant of an annuity or advowson, &c.

**CONVICTS**. The punishment of the hulks and transportation is regulated by 5 G. 4, c. 84. By this act, each hulk is placed under an overseer, who is to reside in it, with a sufficient number of officers and guards; he is invested with the same power as a gaoler over his prisoners; like him, he is answerable for their escape, may inflict moderate punishment for disorderly conduct, is to see them fed and clothed, and is to keep them to labour according to his instructions. Over the whole is placed a superintendent (with an assistant, or deputy, if necessary), who is to inspect them all minutely four times a year at the least, ascertain their condition, examine the behaviour of both overseers and prisoners, the amount of the earnings, and the

expenses of the establishment; upon all which he is to report to the Secretary of State. The dislike of the Australian and some other colonies to be made the receptacle of criminals has caused the punishment of transportation to be almost wholly suspended; but without the discovery up to the present of an adequate or satisfactory substitute.

CONVOCAION, or representative assembly of the ecclesiastical body, is a sort of miniature parliament, in which the archbishop presides, with regal state; the upper house of bishops represents the lords, and the lower, composed of the delegates of the inferior clergy, represents the commons, with its knights of the shire and burgesses. It has, however, not sat for business since 1717, and its mimic assemblies are only *pro forma*, the legislative affairs of the church being managed by the imperial parliament.

COPARCENERY. When an estate of inheritance descends from the ancestor to two or more persons, it is said to be an estate in coparcenery, and those to whom it descends are *coparceners*.

CORN RENTS, rents stipulated to be paid in a fixed quantity of corn, or in money according to the market price of corn. By 18 Eliz. c. 6, in college leases, one-third of the old rent then paid is directed in future to be paid in wheat or malt, reckoning a quarter of wheat for each 6s. 8d., or a quarter of malt for each 5s., or that the lessees should pay for the same according to the price wheat and malt have been sold in the market next adjoining to the respective colleges on the market-day before the rent becomes due.

CORN LAWS. The act of 1846, the 9 & 10 V. c. 22, provides that all duties on the importation of corn, meal, &c., should cease on and after February 1, 1849, and that the following registration duties only should be levied; namely, on every quarter of wheat, barley, oats, bigg, rye, peas, and beans imported, the duty of *one* shilling, and upon every hundredweight of wheatmeal, barley, or oatmeal, &c., a duty of *fourpence halfpenny*.

CORODY, a right of sustenance, or to receive a certain allowance of provisions for maintenance.

CORPUS CHRISTI DAY, a festival instituted in the year 1264, in honour of the sacrament; to which, also, a college in Oxford is dedicated.

CORSNED, or morsel of execration, was a test of delinquency employed in the dark ages. It consisted of a piece of bread or cheese, which was consecrated with a form of exorcism, desiring of the Almighty that it might cause convulsions and paleness, and find no passage, if the accused to whom it was given was really guilty; but might turn to health and nourishment if he was innocent; like the water of jealousy among the Jews. Historians relate that Godwin, earl of Kent, in the reign of

Edward the Confessor, abjuring the death of the king's brother, at last appealed to his *corsned*, which stuck in his throat and killed him.

**COSTARD, APPLE**, whence costardmonger, a seller of apples. *Blount*.

**COSTS**. The expenses incurred in the prosecuting or defending an action are so called. Costs between attorney and client are those which the client always pays his attorney, whether he is successful or not, and over and above what the attorney gets from the opposing party, having lost the cause. Costs between party and party are those which the defeated party pays to the successful one, agreeable to legal usage. See p. 46.

**COTTAGE** is derived from the Saxon *cot*, and, in 4 Edw. 1, signifies a house without land annexed. By a later statute, 31 Eliz. c. 7 (repealed by 15 G. 3, c. 23), no man may build a house without four acres of land to it; so that cottage is any house with less than four acres.

**COUNCIL OF THE CHURCH**, an assembly of prelates duly convened for the purpose of defining questions of doctrine, or making regulations or canons in matters of discipline. They may be either *œcumenic* councils, representing the entire Christian church, or a *national* council, consisting of the prelates of a kingdom assembled by its sovereign, or a *provincial* council, convoked by the bishop of a diocese. The earliest œcumenic council seems to be that which was held at Jerusalem, A.D. 50, and which was attended by the apostles Peter, John, James, and Barnabas.

**COUNSEL**, an abbreviation for counsellor, or one who advises in matters of law; the term has no plural number, and is used to denote one or more counsel. They are styled common law, equity, or chamber counsel, according to the nature of the business they transact.

**COVERTURE**, anything that covers, as apparel or coverlet: but in law is applied to a married woman, as under the protection or power of her husband.

**COUNT** signifies the declaration of the complainant in real action. As declaration is applied to *personal*, so count is applicable to real causes; count and declaration are often confounded, and made to signify the same thing.

**COUNTIES** are synonymous with shires, and form territorial districts, into which the kingdom is divided for better government, and the more easy administration of justice; so that there is no part of the kingdom which does not lie within some county, and every county is governed by its sheriff. Of these counties there are forty in England, and twelve in Wales. *Counties Palatine* are Lancaster and Durham, which appear to have been originally invested with an independent jurisdiction (that of Chester has been abolished), because they were adjacent



to the enemy's countries—Wales and Scotland; and that the inhabitants might have the administration of justice at home, and remain there to secure the frontier from invasion. Besides these counties, there are also *counties corporate*, which are certain cities and towns, with land and territory annexed, having liberties and jurisdiction by grant from the king. These are thirteen in number, and which, by the Reform Act, are, for the purposes of representation, included in the adjoining counties.

**COUNTY RATES** are certain assessments in every parish of a county, assessed by the justices assembled in quarter sessions, upon the full and fair annual value of the lands and tenements rateable to the relief of the poor; they are raised by the churchwardens and overseers, paid to the high constables, and by them to the treasurer of the county. They are applicable chiefly to the payment of coroners' fees for travelling; the repair of county bridges and highways adjoining, to the building and repair of county gaols and houses of correction, shire-halls, and county lunatic asylums; the charges of prosecuting felons and vagrants; and the expenses of bringing insolvent debtors before the circuit commissioners. Business relative to the assessment and application of the county rates must be transacted in open court, and notice thereof given by advertisement. All the acts relative to the assessment and collection of the county rates were consolidated and amended in 1852 by 15 & 16 V. c. 81.

**CrAVEN**, a word of obloquy, by the pronouncing of which in the judicial combat, the vanquished acknowledged his guilt; upon that, judgment was pronounced, and the recreant became infamous. It is of Anglo-Saxon derivation — *Crafion*, and means, to *crave*, to beg, to implore; which to do of an adversary, however hopeless the conflict, was held, in the age of chivalry, dishonourable.

**CREST**, applied to devices, set over a coat of arms.

**CURSITOR BARON**, an officer of the court of Exchequer, who attends to open the court prior to the commencement of each of the four terms; and on the seal days after each term to close the court. He administers the oath to the sheriffs, who are sworn by the court, and to several officers of revenue. Prior to 1833, he had various other duties, but subsequently the office has become nearly a sinecure, and its abolition has been recommended.

**CURTESY OF ENGLAND** is where a man's wife seised in fee has issue by him *born alive*, which, by any possibility, may inherit, and the wife dies; when the husband holds the lands during his life, and is called tenant by the *curtesy of England*, because the custom does not prevail in any other country, except Scotland and Ireland.

**CURTILAGE**, a court-yard or piece of ground lying near, and belonging to, a dwelling-house.

**CUSTOM** is long-established usage, and, if it be general throughout the kingdom, forms parts of the common or unwritten law. *General* customs are determined by the judges, but *particular* customs, used in some towns, boroughs, or cities, are determinable by a jury. The distinction between *custom* and *prescription* is this: *custom* is a local or general usage, not annexed to any person; *prescription* is a personal usage, and not annexed to any place.

**CUSTOMS**, duties levied on commodities exported or imported. They were first authorized by statute in the 3 Edw. 1, and the mode long employed in their collection was to fix a certain rate of value upon each kind of merchandise, and to grant on these rates a subsidy, generally a poundage of 1s. for every 20s. of value in the book of rates. The present book of rates was formed in 1692, and agreeably with the official valuation has been useful for denoting the comparative *quantities* of commodities passing through the customs, but not their *real*, or *declared* value. The collection and management of the customs of the United Kingdom, and of the British possessions abroad, are under the control of a board of commissioners, not exceeding thirteen in number. They are appointed during pleasure, by the crown, and subject, in all matters relative to the execution of their duties, to the authority and direction of the Lords of the Treasury. Subordinate officers of the customs are appointed by the Treasury, or by the commissioners under the authority of the Treasury, and receive such salaries and emoluments, and give such securities, as the Lords of the Treasury appoint. No commissioner, officer, clerk, or other person employed in the collection and management of the revenue of customs is compellable to serve as mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury or inquest, or in the militia. The only holidays allowed are *Good Friday*, *Christmas-day*, and the queen's birthday, and any day of public fast or thanksgiving.

The Customs Consolidation Act of 1853, the 16 & 17 V. c. 167, is a complete embodiment of the law of customs under the several heads pertaining to [the appointment of officers, ports, &c.; the importation and warehousing of merchandise, the entry and clearance of goods and ships for exportation; the coasting trade; British possessions; bonds and other securities; smuggling, including restrictions on small craft, compensations, and rewards; and legal proceedings generally. By s. 44, the following articles are absolutely prohibited to be imported, under pain of forfeiture, and to be destroyed or otherwise disposed of as the commissioners may direct:—

Books, wherein the copyright shall be first subsisting, first

composed, written, or printed in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given notice in writing that such copyright subsists, such notice also stating when such copyright will expire.

Extracts, essences, or other concentrations of coffee, chicory, tea, or tobacco, or any admixture of the same.

Indecent or obscene prints, paintings, books, cards, lithographic or other engravings, or any other indecent or obscene articles.

Snuff work, tobacco stalks stripped from the leaf, whether manufactured or not, and tobacco stalk flour.

Penalty on master for not providing proper accommodation for custom officer while on board, £20. Uncustomed goods found concealed to be forfeited. If seal of custom officer be broken, master to forfeit £100. Officers may put seals upon stores inward, and if such seals be broken, or stores secretly conveyed away, master to forfeit £20. Penalty £20 for entry of goods by unlicensed agents, or by unauthorized persons. Licensed lightermen only to carry goods, s. 123.

Persons may be searched if officers have reason to suspect smuggled goods are concealed upon them. Obstructing officer, penalty £100. Persons denying having uncustomed goods about them, if such are afterwards found, are liable to forfeit treble their value. Persons before search may require to be carried before a justice or principal officer of customs, ss. 229 & 230. Officer misconducting himself, penalty £10. Persons concerned in importing prohibited or restricted goods, or harbouring or having such goods in custody, to forfeit treble the value, or £100. Penalty on officer making collusive seizures, or taking bribes, £500, and future incapacity for public service. Offering any bribe, reward, or recompense to an officer, penalty £200.

CUSTOS ROTULORUM, the keeper of the rolls or records of the sessions of the peace. By 1 W. & M. c. 21, he may appoint the clerk of the peace, but not sell the office, on pain of forfeiture.

CUTLERY. By 59 G. 3, c. 7, articles of cutlery, edge tools, and hardware, requiring a cutting edge of wrought steel, or of iron and steel, and forged or manufactured with a hammer, and not in a mould or otherwise, may be stamped with the *figure of a hammer*, at any time after the forging and previous to the grinding or polishing; using such device on cutlery not made with the hammer, subjects it to forfeiture, and the parties having it in possession or exposing to sale, to a penalty of £5. No person to stamp on cutlery the word *London* or *London made*, or words of similar import, unless made within London, or twenty miles thereof, nor have such in possession, or for sale, under penalty of £10 and forfeiture of the articles.

## D.

**DALMATICA**, a garment with large open sleeves, at first worn only by bishops, though since made a distinction of degrees; so called because it came from Dalmatia. *Blount.*

**DANEGETL**, a tax paid to the Danes, of 1s., and afterwards of 2s., on every hide of land to be left at peace by these searovers.

**DAY**, in law, is a space of twenty-four hours, commencing at mid-night.

**DAY RULE**, a certificate of permission, which the court in term time gives to a prisoner to go beyond the rules of the prison, for the purpose of transacting business, upon application to the marshal or warden, and signing a petition to the court for that purpose.

**DAYS IN BANK** are certain days in term, when writs are returnable, or when the party shall appear in court upon the writ served. They are so called in opposition to days at *Nisi Prius*, when trial by jury took place.

**DEACON**, an ecclesiastical term, designating one of the orders in the church or priesthood, the lowest of the three; namely, bishops, priests, and deacons. The institution of deacons is described Acts vi. 3, 5, and was intended to relieve the apostles of the care of the poor, that they might devote themselves more entirely to the preaching of the gospel. In the English church, the name and form of ordination continue; but the peculiar duties of the office in collecting alms, and dispensing them among the poorer members of the church, has been lost sight of. A person may be ordained deacon at twenty-three. He may then become a chaplain in a private family; be a curate to a beneficed clergyman, or lecturer in a parish church; but, not having taken priest's orders, he cannot hold a benefice, or take an ecclesiastical preferment. There are deacons among the dissenters, who still discharge the duties of the office, but they are always laymen.

**DEBENTURE**, a written instrument of the nature of a bill of exchange, issuing out of a public office, charging Government with the payment of a specified sum.

**DECREE** is the same as judgment at common law, and is the decision of a court of equity, pronounced on the hearing of a cause.

**DECRETALS**, a digest of the decrees of the popes, and of the canons of the councils.

**DEDICATION DAY**, the anniversary of the dedication of churches, formerly kept with much feasting and jollity.

**DEDIMUS POTESTATEM** is a writ issued out of Chancery, authorizing commissioners to take an examination. Also, when a

justice intends to act under a commission of the peace, he sues out a writ of *dedimus potestatem* from the clerk of the crown in Chancery, empowering certain persons named therein to administer the oaths previously required.

**DE FACTO**, a thing actually done or existing. A king *de facto* is one in actual possession of sovereignty; a king *de jure* is one who has a *right* to a crown, but is out of possession.

**DEMESNE**. Such lands as were next to the lord's mansion, and which he kept in his own hands for the support of his household and for hospitality, were called *demesne*.

**DEMISE** is applied to the conveyance of an estate, either in fee, or for life, or years; as applied to the crown of England it signifies the transmission (*demissio*) of the crown and dignity, by the death of a king, to his successor.

**DEMURRAGE** is a compensation or allowance paid by the merchant or exporter to the owners of a vessel, in case she is obliged to wait for goods beyond her lay or running days (days allowed to load or unload a ship), either before or after the voyage, or while she is waiting for convoy. The time allowed for demurrage is usually stipulated in the charter-party; but when no time is fixed, it is expressed that the freighter shall be allowed the usual or customary time, which varies in different ports.

**DENIZEN** is an alien who obtains letters patent to make him an English subject, so far as to purchase and devise land. The issue of a denizen, born before denization, cannot inherit to him, but his issue born after may. A denizen is not exempt from the alien duties, nor can he be a member of the privy council, or either house of parliament, or hold any office of trust, civil or military, or be capable of any grant from the crown.

**DEODAND** is anything, as a horse or carriage, which, by accident, causes the death of a human being, and thereupon becomes forfeited to the queen, or the lord of the manor, as grantee of the crown; in both cases the deodand ought to be sold, and the money distributed to the poor. Deodand, as the derivation of the term imparts, *Deo dandum*, was originally intended as an atonement to God for the untimely death of one of his creatures. Deodands are abolished by 9 & 10 V. c. 62.

**DEPOSITION**, in its general meaning, signifies the act of giving public testimony, but as restricted in law it signifies the testimony of a witness in a judicial proceeding reduced to writing. Informations upon oath, and the evidence of witnesses before magistrates and coroners, are reduced into writing in the words used by the witnesses, or as nearly thereto as possible. Evidence in the Court of Chancery is taken in written answers to interrogatories, which are also in writing.

**DETAINDER**, a writ which lay against prisoners in the Marshal-

sea or the Fleet, directed to the marshal or the warden, commanding him to detain the prisoner until lawfully discharged from his custody.

**DETINUE**, the name of a writ which lies against one who, having goods delivered to keep, refuses to restore them.

**DIES NON** are several days in the different terms on which the courts at Westminster do not transact any business.

**DIGNITIES**, or titles of honour, having been originally annexed to land, are considered as real property; being a sort of incorporeal hereditaments in which a man may have an estate.

**DIGNITARY** of the church is a bishop, dean, archdeacon, canon, or prebendary.

**DILAPIDATION**, a term applied when an incumbent suffers the parsonage or outhouses to fall down, or decay, for want of necessary repairs.

**DISTRINGAS**, a writ directed to the sheriff, or other officer, commanding him to distrain a man for debt: or for his appearance at an appointed day.

**DIVIDEND** is applied either to the money which is divided *pro rata* among the creditors of a bankrupt, out of the amount realized from his assets, or to the annuities or interest payable on the national debt.

**DOCKET**, a short memorandum, or summary, affixed to large papers, or a bill of direction tied to goods, showing the place where, and the person to whom, they are to be delivered. It is also a record in the courts containing an entry of judgment. *Striking a docket* is when a creditor gives bond to the lord chancellor, to prove his debtor to be a bankrupt.

**DOCTORS COMMONS**, the college of civilians in London, founded by Dr. Harvey, the Dean of Arches, for the professors of the civil law. In it are situated the residences of the judges of the ecclesiastical and admiralty courts. It is also the abode of the doctors of the civil law practising in London, who for diet and lodging common together, and hence the place is known as Doctors Commons. To the college belongs a certain number of advocates and proctors. In the common hall are held the principal civil law courts.

**DOMICILE** means generally the home of a person, the place where he lives and lodges, and may be seen and communicated with. The domicile of a child or minor is that of the parents. An illegitimate child, having no father in contemplation of law, follows the domicile of its mother. A married woman follows the domicile of her husband; and a widow retains the domicile of her late husband till she acquires another.

**DOME-BOOK**, or *Liber Judicialis*, an ancient work, compiled by Alfred, supposed to comprise the local customs of the several provinces of the kingdom, the penalties for offences, and the forms of judicial procedure. This book is said to have been

extant so late as the reign of Edward IV., but is now lost. Mr. Turner is of opinion that the laws of Alfred, which are found in Wilkins' collection, are the Dome-Book ; if so, Mr. Coleridge, in a note on Blackstone, remarks that they do not form a code answering to our expectation of a selection and arrangement of the local customs of the provinces for general use. And Mr. Hallam observes, that they are neither numerous nor particularly interesting ; and he calls it a loose report of late writers, that Alfred compiled a general code for the government of his kingdom.

**DOMESDAY** is a very ancient record, made in the time of William I., and now in the Exchequer, fair and legible, consisting of two volumes, a greater and a less : the greater containing a survey of all the lands in England, except the counties of Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire, which, it is said, were never surveyed, and except Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. It was begun by five justices, assigned for the purpose in each county, in the year 1081, and finished in 1086. The question whether lands are ancient demesne or not is decided by the domesday of William, from whence there is no appeal.

**DONATIO MORTIS CAUSA**, a gift of personal property made by a person in contemplation of death under the implied condition the property shall revert to the donor in case he recover. In bequests of this kind there must be an *actual delivery* of the thing intended to be given ; nothing will pass of which absolute possession cannot be given at the time by the donor : thus, stock receipts will not give the stock, for want of a transfer ; nor will bills of exchange, or promissory notes, payable to *order*, unless endorsed over to the party, pass ; but bank-notes and other securities payable to *bearer* will pass. The delivery of a bond and mortgage security to a daughter for the payment of money is a good *donatio mortis causa*, and the heir or executor is bound to give effect to the intent of the donor, 1 *Dow. N. S.* 1.

**DONATIVE** is a benefice merely given and collated by the patron, without presentation or induction.

**DONIS**, *Statute de*. The 13 E. 1, c. 1, sometimes called the statute of "great men," as chiefly concerning them and conservative of their interests, revived in some measure the ancient feudal restraints which were originally laid on alienations, by enacting that in future the will of the donor be observed ; and that estates given to a man and the heirs of his body should at all events go to the issue, if there were any ; or, if none, should revert to the donor. It was intended to preserve the great estates of the nobility from dismemberment ; but gradually, by means of legal fictions, prompted by the growth of commerce

and new views of social benefit, these entailed estates have become, in particular cases and modes, capable of alienation.

**DOWER** is that portion of property to which the widow is entitled, on the death of her husband, for the maintenance of herself and children. Dower is either by *common law* or *custom*. By the *first*, the widow is entitled to one-third of the estate during her life. The *second* varies with the custom of the place; in some manors it is more than one-third, as by *gavelkind* it is one-half, and by custom of *free-bench* the widow may claim the whole during her life. By 3 & 4 W. 4, c. 105, women married after Jan. 1, 1834, cannot claim dower out of land disposed of by their husbands in their lifetime, or by their will: and any partial encumbrances effected by their husbands are good against dower.

**DRAWBACK**, certain duties of the customs or excise, allowed upon the exportation of some manufactures, or upon certain merchandise that has paid the import duty.

**DREDGERMEN**, fishers for oysters.

**DROIT D'AUBAINE**, an inhospitable claim, which existed in France, prior to the Revolution, whereby the king, at the death of an alien, took possession of all his property, unless he had a peculiar exemption.

**DROITS OF THE ADMIRALTY** form a portion of the ancient hereditary revenues of the crown, arising chiefly from enemies' ships, detained previously to a declaration of war, or coming into port ignorant of the commencement of hostilities, or those taken by non-commissioned captors, and the proceeds of wrecks, and goods of pirates.

**DROVERS** are those who buy cattle in one market to sell in another. They are traders subject to the bankrupt laws. The term is also commonly applied to those whose business is to conduct or drive cattle to or from the markets; and in the metropolis they are divided into classes, as country, butcher, and London or Smithfield drovers. They are required to wear a ticket, and renew their licences yearly; to use no other stick than such as shall be approved and marked by the clerk of the market, under penalty of 40s.

**DRUGGIST**, a dealer in all kinds of uncompounded drugs, both foreign and domestic, which he sells to apothecaries and others. Most druggists compound drugs for sale in their own shops, same as apothecaries: they are under the inspection of the College of Physicians, but are not subject, any more than chemists, to the regulation of the Apothecaries Act, 55 G. 3, c. 194. See p. 167.



## E.

**EASEMENT**, a convenience which one neighbour has of another, by grant or prescription ; as a way through his lands, a water-course, or a prospect over his grounds.

**EASTER SUNDAY** is the first Sunday after the full moon that happens next after the 21st of March : it is a movable festival, held in commemoration of the Resurrection, and, being the most important and ancient in observance, governs the other movable feasts throughout the year. The limits within which this day must fall are between the 22nd of March and the 25th of April inclusive, which, before the commencement of the terms was definitely fixed by 1 W. 4, c. 70, made often a long, uncertain, and inconvenient interval for the opening of the courts, and the progress of judicial business.

**EAST INDIA COMPANY.** This company has ceased since 1834 to be commercial, and has become wholly political in its functions. It governs India under the direction of the Board of Control ; or, rather, acts as assisting council to the president of the board, than exercises coequal or any independent powers. By the latest general act, the 16 & 17 V. c. 95, affecting the government of British possessions in the East, some material changes were made in the directory and patronage of the company. By s. 2, after April, 1854, the number of directors to be reduced to eighteen ; in lieu of thirteen directors ten may act ; and in all dispatches and written documents, instead of the signatures of a majority of the directors, those of the chairman and deputy chairman, with that of the senior member of the court, or any two of them, countersigned by the secretary or deputy secretary, to suffice. Six of the directors to be appointed by the crown, each of whom must have served ten years in India ; and of the directors appointed by the company, six must have served ten years in India. With respect to qualification by the possession of India stock, £1000 to be sufficient. Crown directors may sit in parliament ; not removable by the company, but may be removed by the crown for inability or misbehaviour. Not fewer than twenty proprietors, exclusive of directors then present, to form a quorum of the general court of the company, s. 14. By s. 16, directors may alter limits of the presidencies, &c. All appointments of members of council subject to approval by the crown. Former provisions, excluding the fourth ordinary member of council from meetings, except such as pertain to law, repealed. Legislative councillors added to the council of India for making laws, consisting of one for each presidency and lieutenant-governorship, the chief justice of the supreme court of Bengal, and one other judge of the said court ; such additional legislative councillors to vote only at meetings

for making laws. A vice-president of council may be appointed ; in his absence the senior member to preside ; quorum for legislative business, six or more members of council and a judge, or the fourth ordinary member of council. Assent of the governor-general essential to the validity of laws. The crown may appoint commissioners in England, to consider and report on the legal reforms which have been proposed by the Indian law commissioners ; all such reports to be made within three years. Appointment of the advocate-general to be approved by Board of Control. Commander-in-chief of the queen's forces to be commander-in-chief of the company's forces. The number of European troops of the company extended to 20,000 men, and those in training at home to 4000. Sick leave or furlough regulations may be extended as to residence out of the limits of the company's charter, without forfeiture of pay or salary, ss. 29-32. Salary of the chairman and deputy chairman of the company, £1000 each, and of every other director, £500. Salary to the commander-in-chief of the forces, in lieu of all other pay and emoluments, 100,000 company rupees ; to each lieutenant-governor, the same ; to each ordinary member of the council, 80,000 rupees ; to each legislative councillor, 50,000 rupees. Existing rights of *patronage* to cease ; and, subject to the regulations of Board of Control, any natural-born subject of the queen desirous of being admitted into the college at Haileybury, or of being appointed an assistant surgeon in the company's forces, may be admitted as a candidate for such admission or appointment. Regulations to be made by Board of Control, and also respecting admissions into the military seminary of Addiscombe ; such regulations to be laid before parliament. Persons qualified and entitled only according to the regulations to be appointed to the civil and military services of the company. Examiners to be appointed by the Board of Control.

**ECCLESIASTICAL, OR SPIRITUAL COURTS**, are held by the queen's authority, as supreme head of the church, for the consideration of matters chiefly relating to religion. The causes usually cognisable in these courts involve either the dues of the church, matrimonial disputes, or relate to wills and testaments. *See* p. 38.

**EJECTMENT** is a possessory action, by which the title to lands and tenements may be tried and possession recovered.

**ELEGIT**, a writ of execution so called, directed to the sheriff, commanding him to take in execution, but not to sell, the lands and goods of a debtor ; these the creditor holds until his debt be satisfied, during which time he is *tenant by elegit*. By 2 V. c. 110, s. 11, the sheriff to whom an *elegit* may be directed, shall deliver execution of all lands and tenements, freehold or copyhold, over which the debtor has any disposing power for his own

benefit, at or after the time of entering up judgment ; which lands and tenements are to be held subject to such account in the court out of which the execution issues, as a tenant by elegit is now subject to in equity, thus sanctioning by enactment what had long been the practice.

**ELISORS.** If the sheriff, or coroner, who ought to return the jury, be a party to a suit or interested therein, the venire shall be directed to two clerks of the court, or to two persons of the county, named by the court and sworn ; and these two, who are called *elisors*, or electors, shall name the jury.

**ELY, county of,** is only a royal franchise, and not a county palatine, though sometimes improperly reckoned as such.

**EMBLEMENTS** signify the profits of land sown ; but the word is sometimes used more largely for any products that arise naturally from the ground, as grass, fruit, and other crops.

**EMBERING DAYS.** So called, either because our ancestors, when they fasted, sat in ashes, or strewed them on their heads ; they are of great antiquity in the church, and are observed on Wednesday, Friday, and Saturday next after Quadragesima Sunday (or the first Sunday in Lent), after Whit-Sunday, Holyrood Day, in September, and St. Lucy's Day, about the middle of December : hence, in the calendar, these weeks are called *Ember Weeks*.

**EMPEROR,** a title of sovereignty, and, among the Romans, conferred on celebrated and victorious generals.

**ENFRANCHISE,** to give rights, make free, or incorporate in any society.

**ENGLISH LANGUAGE.** By an arbitrary mandate of William I., all pleadings and arguments in courts of justice were directed to be in Norman French : the writs, records, and judgments, however, were continued in Latin, as they had been from the earliest traces which are to be found of them. It was not till the passing of the statute, 4 G. 2, c. 26, that all proceedings in courts of justice were directed to be in the English language.

**ENGRAVINGS.** In *Murray v. Assignees of Heath*, M. T. 1827, a jury decided, that there existed a general practice among engravers of reserving eight copies of every engraving for their use and benefit ; for the plaintiff, that the engraver had no right to retain any number of copies *for sale*.

**ENROLMENT.**—By two statutes of Henry VIII., no deed of bargain and sale is valid, to pass an estate of inheritance, unless the same be enrolled in one of the courts at Westminster, or in the county where the lands lie, with the *custos rotulorum*, within six months after the date. 5 Eliz. c. 26, authorizes the courts in the counties palatine to enrol bargains and sales in like manner. And the 5 Anne, c. 18, authorizes the registrars of the West Riding, and 6 Anne, c. 35, the registrars of the East Riding of Yorkshire, to make the like enrolments. See *Registry of Deeds*.

**ENTAIL** is where the succession to an estate is limited or tied up to certain conditions; as to the heirs of a man's body begotten, or to be begotten. The chief object in this mode of settling property is to rescue from alienation great family possessions. There are two kinds of entailed estates, *general* and *special*. When lands are given to a man and the heirs of his body without restriction, this is called an estate tail general; but if the gift is limited to certain heirs, exclusive of others, this is an estate tail special. Entail estates are also distinguished into estates tail *male*, and estates tail *female*. In the former case, the estate is limited to, or descendible only to, male heirs; in the latter only females inherit. See *Donis de Recoveries*, *Fines*.

**ENURE**, to take place, or be available.

**EPIPHANY**, signifies *appearance*, and is the day when the star appeared to the wise men of the East, generally called Twelfth-day.

**EQUITABLE ESTATE**. A person for whose benefit a trust is created is said to have the *equitable* estate, because his interest is morally defined, and recognised in equity. It is used in contradistinction to the *legal* estate, which may vest in a trustee by virtue of the deed creating the trust, and who is the owner in the view of the law.

**ERLACH**. By the Irish Brehon law, in case of murder, the brehon or judge compounded between the murderer and the friends of the deceased who prosecuted, by causing the malefactor to give to them, or to the child or wife of him that was slain, a recompense, which was called an *erlach*. It answers to the ancient *Were* in England, which *see*.

**ESCHEAT** is where land or tenements, from want of heirs, or from forfeiture, escheat or fall back to the sovereign or lord of the fee, as the original grantor. Escheats are of two kinds: 1. Those forfeitures which belong to the queen in right of her prerogative, upon the defect of heirs to succeed to the inheritance. 2. Those which belong to every lord of the manor, by reason of his seignory, under a royal grant. The law of escheat provides, upon the feudal system, that the blood of the person last seised in fee simple, is by some means or other extinct; and since none can inherit his estate but such as are of his consanguinity, it follows, as a regular consequence, that when such relationship is extinct, the inheritance itself must fail, the land must become what the feudal writers denominate *feodum apertum*; and must revert again to the lord of the fee, by whom, or by those whose estate he has, it was given.

**ESCROW** is a deed delivered to a third person to hold until some future condition be performed by the grantee, and then to be delivered to him.

**ESCUAGE**, a kind of knight service, called service of the

shield, whereby the tenant was bound to follow his lord into the wars at his own charge. Also, it has been sometimes intended as a compensation, taken for actual military service.

**ESPousALS**, the contract or mutual promises between a man and a woman to marry each other.

**Essoign**, an excuse or plea of one summoned, and who is not prepared to answer an action, or to perform suit at a court baron, by reason of sickness or other cause of absence. *Essoign day of Term* is the first day of the term on which the courts are opened, according to ancient custom, to take essoigns or excuses, for such as do not appear according to the summons of the writ; whence it is called the *excuse*, or *essoign*, day of the term.

**ESTOPPEL** is an impediment or bar of an action arising from a man's own act, or where he is forbidden by law to speak against his own deed; for by his act or acceptance he may be *estopped* to allege or speak the truth.

**ESTRAY** is any beast found within a manor or lordship, and not owned, in which case, if it be cried in the two next market towns on two market days, and is not claimed by the owner within a year and a day, it belongs to the lord of the manor. If the cattle were never proclaimed, the owner may take them at any time. And where a beast is proclaimed as the law directs, if the owner claim it in a year and day, he shall have it again, but must pay the lord for keeping. But if any other person find and take care of another's property, not being entitled to it as an *estray*, the owner may recover it or its value, without being obliged to pay the expenses of its keeping.

**ESTREAT**. If the condition of a recognizance be broken, such recognizance becomes forfeited, and, being *estreated*, or extracted from the record, and sent up to the Exchequer, the fine remains to be levied by Exchequer process.

**EXCHEQUER BILLS**. These are issued from the Exchequer, in consequence of acts of parliament passed every session. The first were issued in 1696, and being intended as a temporary substitute for money during the recoinage at that period, some of them were so low as £10 and £5. There are none issued now under £100, and many of them are for £500, £1000, and still larger sums. They bear interest at a certain rate per day for £100, varying with the greater or less amount of unemployed capital in the market; and, being distributed among those who are willing to advance their value, they form a kind of circulating medium. After a certain time, they are received in payment of taxes or other monies due to Government, and the interest due on them at the time is allowed in the payment. New exchequer bills are frequently issued in discharge of former ones, and they are often funded by granting capital in some of the public stock, on certain terms, to such holders as are willing to accept them.

**EXCISE DUTIES** are the name given to taxes levied upon articles of consumption, which are produced within the kingdom. They were first resorted to as a temporary expedient by the Long Parliament, but were found too convenient and productive to be relinquished; and under Charles II., the military tenures, which pressed on the landed interest, were got rid of by an extension of them to the consuming classes. The collection and management of the excise are under the commissioners of inland revenue, who appoint collectors, accountants, and other subordinate officers, and give them such salaries and allowances as the Treasury directs. The levy of the excise revenue is facilitated in England and Wales, by the division of the counties into fifty-six collections, each collection being subdivided into districts, over which there is a supervisor, and each district into out-rides and foot-walks, over which there is a gauger or surveying officer. No person holding any office of excise is allowed to deal in any goods or carry on any trade subject to the excise laws, on pain of forfeiture of office, and disqualification for any office in the excise department. Officers are exempt from filling any corporate, parochial, or other public office, and from serving on a jury or inquest, or in the militia. Officers taking money or reward, or entering into any collusive agreement to defraud the revenue, to forfeit £500. Offering any reward to, or attempting a collusive agreement with, an officer, subjects the offender to like penalty. Either party first giving information against the other is indemnified. Officers may enter at any time premises subject to the survey of excise; but if between the hours of eleven at night and five in the morning (except in special cases) it must be on request, and in presence of a constable. They may also leave on the premises a book or paper called a *specimen*, for recording minutes of entries made by them on the state of the manufactory. Removing, destroying, or in any way defacing such specimen, subjects to penalty of £200. Obstructing or molesting an officer or his assistant in the execution of his duty, penalty £200. Using any premises or utensils which by the law of excise required to be entered, without first making an entry thereof, subjects to a penalty of £200; or using premises or utensils for other purposes than those for which they were entered, penalty £100.

By 15 & 16 V. c. 61, informations for penalties or forfeitures within the limits of the chief office may be heard and determined either before three or more commissioners of the inland revenue, or before a police magistrate sitting at a metropolitan police court. Commissioners may determine either at the chief office, or elsewhere. Officers of inland revenue, or solicitors, appointed by commissioners, may conduct proceedings before magistrates.

**EXCISE LICENCES.** These, within the limits of the chief office

of excise in London, are granted by the commissioners, or persons employed by them for the purpose. Within the limits of the cities of Edinburgh and Dublin, by the commissioner or assistant-commissioners there, or employed by them; elsewhere by the collectors and supervisors of the respective excise collections. Every licence contains the name and abode of the person taking out the same, the date and purpose for which granted, and the place where the trade or business shall be carried on. No excise licence is necessary for the sale of an excisable commodity while it is in the import warehouse, provided such sale be of not less than one entire package or cask made to one person or partnership. No licence to be granted to any person to retail *spirits, foreign or made wines*, to be drunk on the premises, who has not previously obtained a magistrate's licence for the sale of beer, cider, or perry. Spirits, called *aqua vitæ* in Scotland, deemed to be British spirits, and persons retailing such spirits must first take out beer and spirit licences. Upon death or removal, a licence may be transferred by endorsement for the residue of the term, but a fresh entry must be made of the premises, and, in case of a publican, a magistrate's certificate must be obtained. A person disabled by any conviction to hold a licence to keep a common inn, ale-house, or victualling-house, is also disabled to hold an excise licence; and when a retail beer licence is made void by conviction, a retail spirit licence is also made void.

For the annual excise licence duties, see *Licences*.

**EXCLUSION, BILL OF.** The name of a bill by which parliament, in the latter part of the reign of Charles II., sought to exercise the right of altering and limiting the succession to the crown, by setting aside the king's brother and presumptive heir, the Duke of York, on the ground of his being *a papist*; it passed the house of commons, but was rejected in the house of lords, the king having openly declared that it never should receive the royal assent.

**EXECUTIVE MINISTRY, OR ADMINISTRATION,** is a political term, applicable to the higher and responsible class of public officials, by whom the chief departments of the government of the kingdom are administered, and whose tenure of office depends on the confidence of a majority of the house of commons. Their number amounts to fifty or sixty persons, who are supposed to be agreed on all matters of general policy, except such as are specifically left open questions. The cabinet forms a select portion of the administration, rarely less than ten or exceeding fifteen in number, including the premier and his chief colleagues. It being ostensibly and directly responsible for public affairs, their deliberations are always considered confidential, and kept secret even from the other members of the ministry less eminent in office.

**EXECUTORY DEVISE** is where a future interest is devised, that vests not at the death of the testator, but depends on some contingency, which must happen before it can vest. It is an established rule, that an executory devise is good if it must necessarily happen within a life or lives in being, and twenty-one years, and the fraction of another year, allowing for the time of gestation. The subject has undergone much learned investigation in determining the validity of the will of Mr. Thellusson, an eminent merchant of the city of London. This gentleman had three sons, to whom he bequeathed some inconsiderable legacies; the rest of his immense property, consisting of lands of the annual value of £4500 and £600,000 in personal property, he devised to trustees, for the purpose of accumulation during the lives of his three sons, and of all their sons who should be living at the time of his death, or be born in due time afterwards, and during the life of the survivors of them. Upon the death of the last, the fund is directed to be divided into three shares, one to the eldest male lineal descendant of each of his three sons; upon the failure of such a descendant, the share to go to the descendants of the other sons; and upon the failure of all such descendants, the whole to go to the sinking fund. When he died he had three sons living, who had four sons living, and twin sons were born soon after. Upon calculation, it appeared that, at the death of the survivor of these nine, the fund would probably exceed nineteen millions; and upon the supposition of only one person to take, and a minority of ten years, that it would exceed thirty-two millions. This extraordinary will did not originate from any dissatisfaction which the testator's family had ever occasioned, though he was resolved that none of his descendants who were *born* or in *embryo* when he died, should ever enjoy any part of this property. The Chancellor, Lord Loughborough, Lord Alvanley, then Master of the Rolls, Judges Buller and Lawrence, after hearing counsel for several days, were unanimously of opinion that the will was within the prescribed limits of executory devises. But to prevent similar instances of eccentricity, the 39 & 40 G. 3, c. 98, was passed, by which is prohibited any settlement of property for accumulation for any longer term than the life of the settler, the period of twenty-one years from his death, the minority of any person living, or *en ventre sa mere* at the time of his death, or the minority of any person who would be beneficially entitled to the profits under the settlement if of full age. An act has also been obtained to alter in some respects the dispositions of this singular will, which, from the litigation it originated, has been as productive to lawyers as many German principalities to their sovereigns. It was recently traversing the Rolls Court, with a prospect of an appeal to the house of lords.

**EXEMPLIFICATION, of Letters Patent**, is a copy or transcript of



the letters patent made from the enrolment thereof, and sealed with the great seal of England : which exemplification may be shown or pleaded as the letters patent themselves.

**EX-OFFICIO** is an act done in execution of a power which a person has by virtue of his office. *Ex-officio informations* are informations at the suit of the queen, filed by the attorney-general, by virtue of his office, without applying to the court wherein filed for leave, or giving the defendant an opportunity of showing cause why it should not be filed.

**EX-PARTE** is an act, deed, statement, or commission by one party only, without the participation of the other.

**EX-POST FACTO** is used to express something posterior to that which has previously happened ; as an *ex-post facto* law is a law made subsequently to the offence it is intended to restrain or punish.

**EXTENT** is a writ at the suit of the queen, or it may be at the suit of a crown debtor. In the former case it is styled an extent *in chief* ; in the latter, an extent *in aid*. It is of the nature of a writ of execution, and binds all the defendant's lands and property ; the body also may be taken, unless otherwise directed. A writ of error on an extent lies in the exchequer, as also in parliament.

**EXTRA-PAROCIAL** signifies to be out of the bounds or limits of a parish ; which extra-parochial places are privileged and exempt from the duties of a parish. Thus, extra-parochial lands may signify lands newly left by the sea, not taken into any parish. See *Parish*.

**EYRE**, *Justices in*, from the French *eire*, that is, *iter*, were the origin of the present justices of assize. They were appointed A.D. 1176, with a delegated power from the king to make their circuits round the kingdom once in seven years, and afterwards, by Magna Charta, once every year. Abolished by 57 G. 3, c. 61, on the termination of existing interests.

## F.

**FACULTY**, a privilege granted by special indulgence to do that which the law has prohibited. For making these grants, there is a court under the Archbishop of Canterbury, called the *Court of Faculties and Dispensations*, which has power to grant dispensation for persons to marry without bans first asked, for a deacon under age to be ordained, or for an incumbent to hold two or more livings.

**FAIR**, a greater sort of market instituted for the convenience of traffic, so that traders may be furnished with the commodities they want, at a particular spot, without the trouble and loss of time which must necessarily attend travelling from place to

place: and as this is a matter of universal concern to the commonwealth, no person can claim a fair or market unless it be by grant from the king, or by prescription which presumes such a grant, 2 *Inst.* 220.—*Fairs in the Metropolis.* By 2 & 3 V. c. 47, the commissioners of the metropolitan police force have power over fairs held within the distance of fifteen miles of Charing Cross, and may suppress such as are held without charter or prescription. But the owner or occupier of the ground upon which the fair is held may enter into recognizance to try the *legality* of the fair; and in that case the commissioners cannot adopt measures for its suppression till the Court of Queen's Bench has affirmed or negatived its legal existence. By the same act, all business and amusements at fairs, in the neighbourhood of London, must cease at eleven in the evening, and not recommence earlier than the hour of six in the morning. Any house, shop, room, booth, standing, tent, caravan, or other place in the fair, being open within the prohibited hours, is subject to a penalty of £5; and any person present in such house, room, booth, &c., not removing therefrom at the request of a constable, is liable to a penalty of 40s.

FARM, or FERM, is an old Saxon word signifying *provisions*; and it was used instead of rent, because anciently the greater part of rents were reserved in provisions; in corn, in poultry, and the like. So that a farmer, *firmaryus*, was one who held his lands upon payment of a rent or *ferm*; though, at present, by a gradual departure from the original sense, the word farm is brought to signify the estate or lands so held upon farm or rent. 2 *Bl. Com.* 318.

FIDELTY, or FIDELITY, an oath formerly taken at the admittance of a tenant, to be true to the lord of whom he holds his land.

FEE is applied to all those lands and tenements which are held by perpetual right.

FEE-FARM RENTS, of the Crown, are part of the remaining hereditary revenues of the crown, arising out of the royal domains, most of which have been lost or alienated.

FEES. All fees in courts of justice allowed by act of parliament are established fees; and the several officers entitled to them may maintain actions of debt to recover them. All such fees as have been allowed by the courts of justice to their officers, as a recompense for labour and attendance, are established fees; and the parties cannot be deprived of them without act of parliament. But where a fee is due by *custom*, such custom, like all others, must be reasonable. This is the law of fees; but fees in the superior courts of common law and equity have been nearly or entirely abolished, and fixed salaries substituted by recent statutes of reform.

FEIGNED ISSUE is when an action is feigned to be brought, by  
ss 2

mutual consent of the parties, to determine some disputed right, without the formality of pleading, and thereby save time and costs in the decision of a cause.

**FEME COVERT**, a married woman. *Feme sole*, a single or unmarried woman. Hence a married woman, who, by the custom of London, trades on her own account, without the husband being liable for her dealings, is called a *feme sole trader*, because, with respect to her trading, she is the same as a single woman.

**FEOFFMENT** is a grant of lands to another in fee, to him and his heirs for ever, by the delivery of seisin or possession of the thing granted; and in any feoffment the granter is called the *feoffer*, and he that receives is the *feoffee*. It is the most ancient mode of conveying land, to which *livery of seisin* is necessary to give it complete effect. *Livery of seisin* is the feudal investiture or delivery of the possession of the land or tenement to another, by giving him the latch or key, a turf or twig, or doing any other act before witnesses, as clearly puts the party in possession. But the practice is rarely used, and the formality of delivery of seisin on the spot has been superseded by more modern devices. See *Lease and Release*.

**FERE NATURÆ**, beasts and birds of a wild nature, in opposition to the tame and domesticated.

**FERRY** is a liberty, by prescription of the king's grant, to have a boat for passage, to convey horses and men, for reasonable toll, over a river; and such grant precludes another from setting up a ferry in the same neighbourhood. For the purpose of embarking and disembarking his passengers, the owner of a ferry must have a right to use the land on both sides the water; but he need not have any property in the soil on the other side. 6 *Bar. & Cress*, 703.

**FIAT**, an order or warrant for a thing to be executed. It was a term lately of frequent use, having been substituted for a commission of bankrupt. In the matter of Stewart, the secretary of the lord chancellor refused to admit documents, because the old term "commission" was used in the place of fiat.

**FIERI FACIAS**, a judicial writ, when judgment is had for debt or damage, by which the sheriff is commanded to levy the same on the goods and chattels of the defendant.

**FIFTEENTHS** were anciently temporary aids, levied on personal property, by grant to the king from parliament.

**FINDING**. The law of *finding*, after much discordant decision, has been lately determined in the Court of Criminal Appeal in *Reg. v. Wood*. 1. If a man find goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire property of them, really believing, when he takes them, that the owner cannot be found, it is not theft. 2. But if he takes them with

the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny. In this case the prisoner had found a bank-note, but had no means of knowing who was the owner. Afterwards he was informed who the owner was, but notwithstanding he changed it and applied the money to his own use. He was held not to be guilty of larceny, because, when he found it, he did not know that the owner could be found.

**FINE.** This, in its origin, was an amicable composition, by leave of the courts, whereby lands were acknowledged to be the right of one of the parties, and by it all the parties were barred at common law who did not claim within a year and a day. But 3 & 4 W. 4, c. 74, abolishes fines and recoveries, and substitutes more simple modes for assuring lands and barring estates tail. *Fine* is also a sum of money paid for the grant of lands by lease, or on the admission to a copyhold interest. *Fine* signifies, too, a pecuniary satisfaction awarded by courts of justice for offences against the laws. )

**FINES.** Offenders in the London prisons, under sentence of imprisonment for long or short periods, are or used to be so denominated.

**FIRST FRUITS** are the profits payable to the queen after the avoidance of every spiritual preferment for the first year, according to the valuation in the King's Book. The *Tenths* were also a payment to the king of the tenth part of the annual value of every living. Both first fruits and tenths were anciently payable to the pope; but when the papal power was abolished, in the reign of Henry VIII., this revenue was annexed to the crown. By 2 Anne, c. 11, the revenue of first fruits and tenths was granted, for the purpose of being vested in trustees, to form a perpetual fund for the augmentation of poor livings; this is usually called **QUEEN ANNE'S BOUNTY**, which fund has been subsequently increased by benefactions from individuals, and an annual grant from parliament of £100,000. The trustees were erected into a corporation, and have authority to make rules and orders for its distribution. The principal rules they have established are, that the sum to be allowed for each augmentation shall be £200, to be laid out in land, to be annexed for ever to the living; and that they shall make this donation, first, to all livings not exceeding £10 a year; then to all livings not above £20; and so in order, whilst any remain under £50 a year. But when any private benefactor will advance £200, the trustees will give another £200 for the advancement of any living not above £45 a year, though it should not belong to that class of livings which they are then augmenting. Livings under the clear yearly value of £50 are not liable to the payment of either first fruits or tenths. First fruits and tenths, by 1 V. c. 20, are placed

under the management of the governors of Queen Anne's Bounty.

**FISHERY**, *Free*, is an exclusive right of fishing in a public stream or river; this is a royal franchise, and must be at least as old as the reign of Henry II., no such franchise being grantable by the express provision of Magna Charta.

**FLEET**, long a noted prison in London, and so called from a stream or ditch that formerly flowed uncovered in the front of it. It was a place of considerable antiquity, and was the receptacle for victims of the Court of Star Chamber. When that tribunal was abolished, the Fleet was appropriated to debtors and persons committed for contempt of the Courts of Chancery, Common Pleas, and Exchequer; but who are now confined in the Queen's Prison, and the Fleet itself has been pulled down. Till the passing of the Marriage Act, in 1755, marriages were celebrated in the Fleet, with much the same forms and solemnity as till recently were observed at Gretna Green.

**FLOTSAM**, goods found floating on the sea; these belong to the queen or lord of the manor, unless claimed by the owner within a year and a day.

**FOLKMOTE**, an ancient assembly of the people to deliberate on matters of public interest: but the nature and constitution of the Folkmote have not been very precisely ascertained.

**FORFEITURE OF GOODS** was formerly the punishment of all felonies and of suicide; the law considering suicide a felony committed by a man upon himself. Lands are now only absolutely forfeited in treason and murder; in felony and suicide goods are forfeited, and the interest of lands during the life of the offender. Outlawry for murder or treason operates as a forfeiture of lands and goods; and a person outlawed for debt forfeits the profits of his lands and all his goods, which are distributed by the Treasury among the creditors prosecuting the outlawry. In manslaughter goods and chattels are forfeited. Drawing a weapon on a judge in court, and striking any one in the presence of the queen's courts of justice, involve the forfeiture of goods and the profits of lands during life. See *Attainder*.

**FORMA PAUPERIS** is where any person has just cause of suit, and is so poor that he can make oath he is not worth £5 after all his debts are paid, and excepting the property in question: upon oath made of this fact, and a certificate from a barrister that he has good cause of action, the court will permit him to sue *in forma pauperis*, without paying any fees to counsel, attorneys, or clerks in court. If a cause go against a person suing *in forma pauperis* he is liable to imprisonment for the costs of the defendant. And it has been determined, and was confirmed in *Wakely v. Millard*, E. T. 1826, that a defendant

in a civil action cannot be admitted to *defend* as a pauper, but under some act of parliament; and the statutes of the 11 & 23 of H. 8 contain no provision in behalf of the defendant, but merely enable the plaintiff to sue in that form. But by 2 G. 2, c. 28, persons arrested on a *capias*, or information relating to the customs, may be admitted to defend *in forma pauperis*.

A FORTIORI, that is, with greater reason or stronger argument.

FRANKALMOIGN is a specie of tenure whereby a religious corporation held lands of the donor to them and their successors for ever. The nature of the service they were bound to perform for these lands is not strictly defined, further than to pray for the souls of the donor and his heirs. It is the tenure by which almost all the religious houses held their lands; and by which the parochial clergy and many ecclesiastical and eleemosynary foundations hold them at this day; the nature of the service being, upon the Reformation, altered and made conformable to the Protestant doctrines of the church of England.

FRANK-PLEDGE is an ancient pledge or security, by which the freemen of a neighbourhood bound themselves to mutual fidelity to the king, and due observance of the laws. When any offence was committed, it was forthwith inquired to *what pledge* the offender belonged, and then those of that pledge either produced the offender within thirty-one days, or satisfied for his transgression. The custom of frank-pledge was so strictly observed, that the sheriff at every county court carefully administered the oath to young persons at fourteen, and saw they were settled in some tithing or decennary: hence, this branch of their office was called *view of frank-pledge*.

FREEMEN. Being a freeman of a city or town usually gave the right of voting for members of parliament, the privilege of exercising trades, and eligibility to corporate immunities. But the extension of the elective franchise to £10 householders by the Reform Act, and the abolition of exclusive rights to trade by the Municipal Corporation Act, have rendered the freedom of most cities and towns of little importance.

FUNDED DEBT is that immense capital, or pecuniary obligation of the State, which, from time to time, has been lent to Government, and which constitutes the *Public Debt*; and for which the lenders, or their assigns, receive interest or annuities out of the taxes.

## G.

GABELLE is, strictly, a tax on salt, but is sometimes applied to any other tax, or to rent, custom, or service.

GAGE, a pledge or pawn.

GAOL is a prison, or strong place, for the custody of debtors

and criminal offenders. All gaols, whether in the keeping of the sheriff of a county or city, or corporation, belong to the queen. In every county there must be at least one common gaol, and one house of correction: when a county is divided into ridings, having distinct commissions of the peace, and assessments of county rates, there must be a house of correction for each riding. The houses of correction are for the custody of vagrants and those summarily convicted by magistrates, or at quarter sessions, and justices have specially the keeping of such gaols. But murderers and felons are imprisoned in the common gaol, of which the sheriff has the keeping. Debtors are also imprisoned in the county gaol, if not removed by *habeas corpus* to the prison of the court whence the process issued. The house of correction for the county of Middlesex is a *legal* prison for the safe custody of persons under a charge of high treason; and the Tower is a legal prison for state prisoners, by immemorial usage. The Court of Queen's Bench may commit to any prison in England, and the persons so committed cannot be removed or bailed by any other court.

By 4 G. 4, c. 64, which is the general act, the following rules are directed to be observed in gaols and houses of correction:—

1. The keeper of every prison shall reside therein. He shall not, nor any other officer of the prison, nor any person in trust for him, have any benefit in the sale of any article to the prisoner, nor in any contract for the supply of the prison.
2. A matron shall be appointed in every prison where female prisoners are kept.
3. The keeper, as far as practicable, shall visit every ward once in twenty-four hours; and in visiting the female ward he shall be accompanied by the matron.
4. The keeper to keep a journal of all punishments ordered by him, for the inspection of the justices at quarter sessions.
5. Precautions shall be taken to keep separate the male and female prisoners; to prevent them seeing or conversing with each other; and the prisoners shall be divided into classes according to the nature of their offences.
6. Female prisoners shall, in all cases, be attended by female officers.
7. Every prisoner sentenced to hard labour shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of the time allowed for meals, Sundays, Christmas Day, Good Friday, days appointed by public authority for fasting or thanksgiving, excepted.
8. Provision to be made for instructing the prisoners in reading and writing.
9. No prisoner shall be put in *irons*, except in cases of urgent and absolute necessity, of which due notice shall be given to one of the visiting justices; nor, by 3 V. c. 56, kept in irons longer than twenty-four hours, without an order in writing from a visiting justice.
10. Prisoners not receiving any allowance from the county,

whether confined for debt or before trial, shall be allowed to receive, at proper hours, any food, bedding, clothing, or other necessities, subject to such examination and restriction as may exclude anything like *luxury* or *extravagance* within the walls of a prison. 11. Prisoners *after conviction* shall not receive other than the gaol allowance. 12. No person shall be discharged from any prison while labouring under any acute or dangerous distemper. 13. All prisoners shall be allowed as much air and exercise as may be deemed proper for the preservation of health. 14. No tap shall be kept in any prison, nor any wine, spirits, beer, or other fermented liquors admitted (nor, 2 & 3 V. c. 56, tobacco), unless by a *written* order of the surgeon, specifying the quantity, and for whose use. 15. No *gaming* shall be allowed; and the keeper shall seize and destroy all cards, dice, and other instruments of gaming. 16. No money, under the name of *garnish*, to be taken from any prisoner under any pretence whatever. 17. And last, on the death of a prisoner, notice shall forthwith be given to one of the visiting justices, as well as to the coroner of the district. Copies of these rules are to be put up in every prison. The act also provides for the admission, at proper times and under proper restrictions, of persons with whom prisoners may be desirous to communicate; and the Court of Queen's Bench may compel the observance of this enactment, by mandamus, ordering the sheriff and gaoler to admit the attorney into the prison to consult with a prisoner, *Rex v. Thurtell*, A.D. 1823. Justices may allow prisoners on their discharge, besides *necessary clothing*, any sum not exceeding 20s. nor less than 5s. Prisoners *committed for trial* cannot be compelled to labour, and are entitled, by 5 G. 4, c. 85, to such food as may be sufficient for health without being obliged to perform any kind of labour. For effecting greater uniformity in prison discipline, inspectors have been appointed under 6 & 7 W. 4, c. 10. The 3 & 4 V. c. 25, requires that in every debtors' prison, rules must be made with the approval of the Secretary of State, and that in every gaol or bridewell in England and Wales prisoners convicted of misdemeanors, and not sentenced to hard labour, must be divided into at least two divisions, and that separate rules must be made for each division. The 5 & 6 V. c. 53, after declaring that a good system of prison discipline can be carried into effect most easily and at the least cost by the establishment of large prisons, empowers justices of counties and boroughs to unite and form district prisons, with gaol sessions for management and superintendence.

**GARNISH**, certain sums which were formerly levied by gaolers on the admission of prisoners. All such exactions are strictly prohibited by the Gaol Act, mentioned above, 4 G. 4, c. 62, and fees on criminal proceedings.



**GARTER**, *Knight of the*, the first personal dignity after the peerage of the realm, is a Knight of the Order of St. George, or of the Garter, first instituted by Edward III., A.D. 1344. \*

**GEMOTE**, a Saxon word, signifying a convention, assembly, or a court.

**GENTLEMAN** is one who bears coat armour, the grant of which adds gentility to a man's family, 2 *Inst.* 667. According to Blackstone (1 *Com.* 406), it is a student at law, or in the university, or one who professes the liberal sciences, or can live idly, without manual labour, and bear the charge and countenance of a gentleman. In the case of an apportionment of a charitable allowance, a court of equity directed the master to include, in the definition of gentlemen, "magistrates, esquires, members of the three learned professions, graduates of the universities, attorneys, surgeons, apothecaries, and the like." (*Law Mag.* XII. 202.)

**GIST OF ACTION** is the fact or particular point on which the action turns, without which it is not maintainable.

**GLEANING**. Two actions of trespass have been brought in the Common Pleas against gleaners, with an intent to try the general question, namely, whether such a right existed; in the *first*, the defendant pleaded that he, being a poor, necessitous, and indigent person, entered the plaintiff's close to glean; in the *second*, the defendant's plea was the same as before, with the addition that he was an inhabitant *legally settled within the parish*: to the plea in each case, there was a general demurrer. Mr. J. Gould delivered a learned judgment in favour of gleaning, but the other three judges were clearly of opinion that "this claim had no foundation in law; that the only authority to support it was an extra-judicial dictum of Lord Hale; that it was a practice incompatible with the exclusive enjoyment of property, and was productive of vagrancy and many mischievous consequences." Notwithstanding these sage conclusions, the practice continues to be generally allowed in England, and it has at least the sanction of the Mosaic laws, *Levit.* c. xix. v. 9, and c. xxiii. v. 22. In some parts the poor are allowed to glean before the harvest is carried, but more generally not till afterwards. At a meeting of farmers in Hertfordshire, Aug. 11, 1845, resolutions were come to fixing the hours of the day during which gleaning would be permitted, and excluding from the liberty to glean able-bodied labourers between 18 and 60 years of age.

**GLEBE** is the land belonging to a parish church, or of which the rector or vicar is seised in right of the church.

**GOLD**. Neither gold nor silver is adapted to the purposes of coin or commerce, except to beat into leaf gold or silver, till it has been hardened by the admixture of some inferior metal, as

copper or brass. Though most nations differ in the quantity of such alloy, as well as the same place at different times, yet in England the standard for gold and silver coin has for a long time been as follows: namely, twenty-two parts of fine gold and two parts of copper, being melted together, shall be esteemed the true standard for gold coin. And that eleven ounces and two pennyweights of fine silver and eighteen pennyweights of copper, being melted together, shall be esteemed the true standard for silver coin, called *sterling* silver. By 7 & 8 V. c. 22, all gold wares of the standard fineness of 22 carats of fine gold in every pound troy, must, since Oct. 1, 1844, be marked with a crown and the number 22, instead of the lion passant. By 17 & 18 V. c. 96, the queen in council is empowered to allow any standard for gold wares not less than one-third part in the whole of fine gold, and to appoint a stamp setting forth in figures the actual fineness, according to the standard so declared, of every gold vessel, plate, and manufactures of gold. Such gold wares as are by statute now in force not liable to be assayed, are nevertheless to be assayed and marked as one of the standards authorized by law. Old statutes relating to the standards of gold remain in full force. Any assayer or other officer marking gold ware of a lower standard with the mark appropriated to a higher standard incurs a penalty of £20, and dismission from his office; and all wares so stamped improperly are, liable to seizure. By 18 & 19 V. c. 60, *gold wedding rings* are, in respect of standard fineness, required to be assayed and marked in like manner as gold plate. See *Assay*.

GRAIN, the twenty-fourth part of a pennyweight. The origin of all weights in England was a *grain* or corn of wheat gathered out of the middle of the ear, and, being well dried, thirty-two of them were to make one pennyweight, twenty pennyweights one ounce, and twelve ounces one pound. But, in later times, it was thought sufficient to divide the same pennyweight into twenty-four equal parts, still called grains, being the least weight now in common use.

GRAMMAR SCHOOLS. In 1840 an effort was made to improve the condition and extend the benefits of these foundations, by giving a wider construction to the term "Grammar" than had been the practice in courts of equity, and, in lieu of restricting it to Greek and Latin, extending it to other branches of literature and science. With these views the 3 & 4 V. c. 77, empowers a court of equity to make a decree for enlarging the system of education, and for modifying the conditions of admission, with a due regard to the intentions of the founders. The court may also remove incompetent or negligent masters, and justices are empowered to give possession of the school. Application to the court must be by petition; but the act does

not extend to the universities, nor to Rugby, Harrow, the Charter-house, and other endowments.

GRANGE, used for a farm-house, granary, or other outbuilding appertaining to husbandry.

GREAT SEAL. The office of Lord Chancellor is conferred by the sovereign simply delivering the great seal to the person who is to hold it, verbally addressing him by the title which he is to bear. He then takes the oath of office to serve faithfully, to do right to all manner of people, truly to counsel the sovereign, and maintain the rights of the sovereign. The great seal is considered the emblem of sovereignty—the *clavis regni*—the only instrument by which, on solemn occasions, the will of the sovereign can be expressed. Absolute faith is universally given to every document purporting to be under the great seal, as having been duly sealed with it by the authority of the sovereign. When, in a new reign, or on a change of the royal arms or style, an order is made by the sovereign in council for using a new great seal, the old one is publicly broken, and the fragments become the perquisite of the Chancellor. The ceremony of breaking the seal consists in the sovereign giving it a gentle blow with a hammer, after which it is supposed to be broken, when, according to Lord Campbell (*Lives of the Lord Chancellors*, p. 261), it has lost all its virtue.

GREEN CLOTH, a court of the queen's household for keeping the peace, &c., within the verge of the palace, composed of the lord steward, comptroller, and other officers, and so termed from the *green cloth* covering the table.

GREEN WAX, estreats delivered to the sheriffs from the Exchequer, under the seal of that court, impressed in *green wax*.

GROATS, the allowance to prisoners kept in execution for debt, is vulgarly so called, it being formerly *fourpence* per day, since augmented to sixpence.

GROGERS, in 37 G. 3, are meant merchants who *engrossed* all vendible commodities.

GROOM OF THE STOLE is an officer of the royal household, whose precinct is the queen's bedchamber; *stole* signifies a robe of honour.

GUARANTEE, *see* p. 339.

GUILD, a name given to those mercantile associations or fraternities of traders or craftsmen formerly common in most towns, and not yet wholly extinct. In their greatest prosperity these companies, especially in London, Norwich, Coventry, and Bristol, became important bodies, in which nearly the entire trading, skill, and industry of the community were enrolled. They made by-laws for the regulation of their members; had their common hall and property; and were mostly selected as the trustees of charitable bequests.

GYPSIES, or, as they are sometimes termed, *Egyptians*, from the supposed place of their origin or appearance, are bands of vagrants or impostors, who seem first to have attracted notice in Europe about the beginning of the fifteenth century. They affect a peculiar dialect and complexion, and support themselves by handicraft arts, begging, pilfering, and fortune-telling. The laws were formerly severe against them, and Sir Matthew Hale informs us, that no less than thirteen gypsies were executed at one Suffolk assizes, a few years before the Restoration. It was only by 1 G. 4, c. 116, that the 5 Eliz. c. 20, which made it felony to associate with gypsies for one month, or for gypsies to be found in the kingdom for the same period, was repealed. They are now punishable under the Vagrant Act.

## H.

HABEAS CORPUS, a writ of right directed to the sheriff or other officer, commanding them to bring up the body of the prisoner in their custody, and is available to all persons, whether natives or aliens. There are several species of this writ, but the most important is that which protects the subject from arbitrary imprisonment, and has been described, p. 31.

HÆRETICO COMBURENDO. A writ that lay against a heretic, who, having been convicted of heresy by the bishop, was delivered over to the secular power to be burnt. It was abolished by the 29 C. 2, though we have instances of its being put into execution upon two Anabaptists so recent as the 17 Eliz., and upon two Arians in the 9 James 1.

HALF BLOOD is where the relationship proceeds not from the same *couple* of ancestors, which constitutes a kinsman of the *whole* blood, but from a single ancestor only; as where two brothers descend from the same father and not from the same mother, or the contrary.

HALL, the Saxon term for mansion-house or dwelling. It is also applied to a court-baron; and hence *town-hall* and *shire-hall*. Hence, too, the hallmote-court of London. A *common-hall* is a meeting of the liverymen of the city of London at Guildhall for the election of Lord Mayor, Sheriff, &c., and for public purposes.

HANAPER OFFICE, one of the offices formerly belonging to the Court of Chancery, but abolished by 5 & 6 V. c. 103, and duties transferred. Writs relating to the business of the subject and their returns were anciently kept in a hamper, in *hanaperio*; and the others, relating to matters in which the crown was interested, were preserved in a little sack or bag, in *parvâ bagâ*; hence has arisen the distinction of the *hanaper* and *petty bag office*, both of which belonged to the common law court in Chan-

**cery.** Certain offices in the Petty Bag are regulated by 12 & 13 V. c. 109, which requires the clerk of the Petty Bag to execute his duties in person, not by deputy, unless in case of sickness. After Mr. Abbot ceases to hold the office, no future appointment is to act as attorney or solicitor, nor the present clerk, if his salary amount to £800. The act also subjects to removal, and disqualification to hold any office in any court of law or equity, certain officers in the Court of Chancery who exact fees for doing or for refraining to do certain duties pertaining to their offices.

**HANDSALE.** Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain, a custom which is still frequently observed in verbal contracts. A sale thus made was called *handsale*; till, in process of time, the same word was used to signify the *earnest money* given after the shaking of hands, or instead thereof: in the north it is pronounced *hansel*.

**HANSE**, an old Gothic word, signifying a society of merchants, for mutual assistance and co-operation; hence the *Hans Towns*.

**HANS TOWNS.** Towards the middle of the thirteenth century, the nations round the Baltic were extremely barbarous, and infested that sea with their piracies; this obliged the cities of Lübeck and Hamburg, soon after they began to open a trade with these people, to enter into a league of mutual defence. They derived such advantages from this union that other towns acceded to the confederacy, and in a short time eighty of the most considerable cities scattered through the countries which stretch from the bottom of the Baltic to Cologne, on the Rhine, joined in the famous *Hanseatic League*, which became so formidable that its alliance was courted, and its enmity dreaded by the greatest monarchs. The members of this powerful association formed the first systematic plan of commerce known in the middle ages, and conducted it by laws enacted in their general assemblies. Such, however, are the vicissitudes of commercial greatness, that scarcely any vestige now remains of the great wealth said to have been possessed by the Hans Towns; and it is even uncertain where some of them are situated, or to what towns in Europe the Latin names given to them belong.

**HARBOUR.** The queen is empowered by statute to assign the limits of all ports, wharfs, and quays, for the exclusive landing and loading of merchandise. The erection of beacons, light-houses, and sea-marks, is also a branch of the royal prerogative. By the 8 Eliz. the corporation of the Trinity House are empowered to set up beacons and sea-marks, wherever they think necessary; and if the owner of the land, or other person, shall destroy or remove them, he forfeits £100. By 46 G. 3, c. 153, no pier, quay, wharf, jetty, breast, or embankment, shall be

erected in or near to any public harbour, without giving one month's notice to the Admiralty, on pain of £200, to be recovered by action or information.

HART, a stag, or male deer of the forest, five years old.

HEADBOROUGH was anciently the head of the frank-pledge in boroughs, or the chief of the ten pledges or tithing; the other being denominated *landboroughs*, or inferior pledges. Headborough is now a kind of constable or peace officer.

HEARTH-TAX, a duty imposed, by 14 Car. 2, c. 2, on every hearth and stove of every dwelling in England and Wales. It was much complained of as oppressive, and repealed by 7 & 8 W. 3, c. 18, which substituted an equally grievous duty on windows.

HEGIRA, an epoch from which the Turks and Arabians compute events, commencing from the day of Mahomet's flight from Mecca to Medina, which was July 16, A.D. 622.

HEIR-LOOMS are such goods and personal chattels as, contrary to the nature of chattels, go by *special* custom to the heir along with the inheritance. The termination *loom* is of Saxon origin, in which language it signifies a *limb* or *member*; so that a heirloom is nothing more than a limb or member of the inheritance. Family pictures may by will be rendered heir-looms, 1 *Swanst.* 537.

HENCHMAN, a running footman anciently attendant upon persons of quality.

HEPTARCHY. The kingdom of England, under the Saxons, was divided into a heptarchy, consisting of seven independent kingdoms, peopled and governed by different colonies of Jutes, Angles, and the like; these were all reduced into one kingdom, by Egbert, King of the West Saxons, and grandfather of Alfred, in the year 827 or 828; Egbert was, therefore, the first King of England.

HERIOT, a relic of ville in tenure, consists in a surrender of the best beast, chattel, or piece of plate, to the use of the lord on the death of the tenant.

HERALDS. In days of chivalry, the principal employment of the herald was to carry messages of defiance, or proposals of peace, from one sovereign prince or chieftain to another; and in such high esteem was the office held, that the senior heralds were styled *kings*, and the sovereign himself vested them with the dignity by pouring a gold cup of wine on their heads, and proclaiming their style and title. In modern times the principal business of the herald is to proclaim peace and war, to superintend all royal and state ceremonies, particularly coronations, and the installation of knights of different orders; to arrange public funerals, to record and emblazon the arms of the nobility and gentry, and check all spurious assumptions in this respect.

**HERALDS' COLLEGE.** The heralds of England were first incorporated by Richard III. who gave them a magnificent mansion for their college. The Earl Marshal of England is superior of the college, and has the right of appointing the members of which it consists; namely, three *kings* at arms, eight *heralds* at arms, and four *pursuivants* at arms. The *kings* are Garter, Clarencieux, and Norroy. Garter was instituted by Henry V. for the service of the order of the Garter, and is acknowledged as principal king at arms. Clarencieux and Norroy are called "provincial kings," the former having jurisdiction over that part of England south of the Trent, and the latter over the country north of that river. The distinguishing colour of the garter is blue; of the two provincial kings, purple. The eight *heralds* are styled of York, Lancaster, Cheshire, Windsor, Richmond, Somerset, Hanover, and Gloucester, who rank according to seniority of appointment. The four *pursuivants* are blue-mantle, rouge-croix, rouge-dragon, and portcullis.

**HERITABLE**, the Scotch term for *real*, in contradistinction to *moveable* or chattel property. *Heritor* is the landlord or owner of the soil in Scotland.

**HERITABLE JURISDICTION**, a grant of criminal jurisdiction, formerly made to great families in Scotland for facilitating the administration of justice; abolished under George II. as tending to keep up divisions in that kingdom, and perpetuate the interest of the Stuart family.

**HIGH COMMISSION COURT**, an oppressive tribunal, intended to take cognizance of ecclesiastical offences. It was abolished by the 16 Car. 1, and an attempt to revive it during the reign of James II., hastened the expulsion of that prince.

**HIGH CONSTABLE OF ENGLAND.** The duties of this office were to regulate tilts and tournaments, and other feats of chivalry performed on horseback. It has been disused since the attainder of Stafford, Duke of Buckingham, under the reign of Henry VIII., and in France it was suppressed about a century later, by an edict of Louis XIII.

**HIGHWAY**, a common way, leading from one town to another, and over which every person has an equal right of thoroughfare, and this whether it be only a foot-way, a horse and foot-way, or a cart-way. A way to a parish, which is only for the particular inhabitants of such parish, is a *private* way only, and not a highway, because it does not belong to the public, but to some particular persons, each of whom may have an action for a nuisance thereon.

**HIGLER**, a person who carries from door to door, and sells by retail, small articles of consumption.

**HOLDING OVER** is keeping possession of land or tenements after the expiration of the term.

**HOLIDAYS.** By several statutes, no holidays are allowed to be

kept at the London or other wet docks, or at the stamp-office, the custom-house, or at the chief or any other office of excise, except on Christmas Day and Good Friday, general fast and thanksgiving days, and the anniversaries of the restoration of Charles II., and of the coronation and birth of the queen. The 5th of November is to be kept as a day of thanksgiving, by 3 Jac. 1. The 29th of May is to be an anniversary thanksgiving, by 12 Car. 2. And 30th of January is a day of humiliation, by 12 Car. 2. By 3 & 4 W. 4, c. 42, no holidays are allowed in the courts of common law, or in offices appertaining thereto, except Sunday, Christmas Day, and the three following days, and Monday and Tuesday in Easter week.

**HOLOGRAPH**, in Scotch law, a deed in the handwriting of the granter, and as such privileged and held probative without the forms requisite in other deeds.

**HOMAGE**. On the grant of lands under the feudal system, besides the oath of *fealty*, or declaration of fidelity to the lord, which was the origin of our oath of allegiance, the vassal or tenant, on investiture, did *homage* to his lord, openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of his lord, who sat before him, and there declaring that, *He did become his MAN, from that day forth, of life and limb, and earthly honour.*

**HONOUR**, an inferior sort of manor or seignory. A man may claim an honour by grant or prescription; but the crown cannot make an honour without an act of parliament. The number of honours now existing in the kingdom is eighty.

**HORNING**, a Scotch law-term for the process which charges a debtor to pay his debt or discharge his obligation before his person or estate is seized. The process, or *diligence*; as the Scotch term it, may be either real or personal; real, when the object is to attach the heritage or real estate; personal, when the object is to attach the person or chattels.

**HOSPITALS** are eleemosynary foundations, constituted for the perpetual distribution of the free alms or bounty of the founders, for the maintenance of the poor, sick, and impotent. By 39 Eliz. c. 5, any person seised of an estate in fee-simple may, by deed enrolled in Chancery, found an hospital for the relief of the poor, to continue for ever; and, by two more statutes of the same reign, the Lord Chancellor is empowered to issue a commission to inquire into the abuses and breaches of trust in hospital foundations.

**HOTCHPOT**, a mingling together; bringing in all monies and effects into one sum or account, in order to a more equal partition. A sum advanced to a child is to be brought into *hotchpot* with an intestate's effects, so that the property advanced is debited on the division of the father's property.

**HOUSEHOLDER**. By the Reform Act, resident householders



paying a rent of £10 per annum, and rates and taxes, are entitled to vote for representatives of the parliamentary boroughs. Under the Municipal Corporations Act, being resident for two whole years, and paying borough rates and poor rates, gives the right of a burgess, entitling to vote for members of the town council. Under the words *household furniture or goods* is comprised everything contributing to the comfort of the householder or the ornament of his house, *Amb.* 605.

HOVEL is defined, by Cowel, a place where husbandmen set their ploughs and carts out of the rain or sun.

HUNDRED, a well-known division of counties, first adopted by King Alfred, and which consisted of ten tithings, or a hundred families. In the northern counties, hundreds are termed *wapentakes*.

HUSTINGS is a court held before the lord mayor, recorder, and sheriffs of London, and is the principal and supreme court of the city.

HYPOTHECATE. When a ship at sea springs a leak, or is otherwise in danger of being lost, for want of provisions or necessaries, the master may *pledge*, or *hypothecate*, the ship and goods, or either of them, for such necessaries as are wanting, which power is impliedly given him in constituting him master, and which he may exercise rather than the ship should be lost or the voyage defeated. The master, however, cannot hypothecate the ship or goods for any debt of his own, nor in any case but for the preservation of the ship and the completion of her voyage. Neither is the owner *personally* liable for any contract of his beyond the value of the ship and cargo.

## I.

ICH DIEN, the motto belonging to the arms of the Prince of Wales, signifying *I serve*; it was the motto of John, King of Bohemia, slain in the battle of Cressy, and taken up by Edward the Black Prince, to show his subjection to his father, Edward III.

ILLUMINATE signifies, in the old books, to draw the initial letter in gold and silver, and those persons who excelled therein were called *illuminators*.

IMPANEL, the writing and entering in a parchment schedule, by the sheriff, the names of the jury summoned.

IMPARLANCE, time to plead. Leave given by the court to defendant to answer the plaintiff at another time.

IMPEACHMENT, an indictment or accusation presented by the commons of the United Kingdom to the house of lords, as the supreme court of criminal jurisdiction. A commoner cannot be impeached before the lords for a *capital* offence, but only for a high misdemeanor; a peer may be impeached for any crime.

On the trial of Warren Hastings, a doubt was raised whether the lords are bound by the same rules of evidence as are admitted in criminal trials in the inferior courts. This was satisfactorily removed by the late Professor Christian, who has shown that the house of lords, in cases of judicature, are bound by the same rules of testimony as are observed in all other courts.

**IMPOTENCY**, in ecclesiastical law, signifies inability to propagate the species, which is ground for a divorce, 4 *Bl.* 434.

**IMPRESSMENT OF SEAMEN.** The right of impressment for the sea service by the king's commission was long matter of dispute, and submitted to with reluctance, though it has been shown by Sir Michael Foster that the *practice* of impressing and granting powers to the Admiralty for that purpose is of very ancient date, and has been uniformly continued from a very early period. The legal difficulty arises from this: no statute has expressly declared such power to be in the crown, though many very strongly imply it. The 2 R. 2, c. 4, notices the arrest and retention of mariners for the king's service; and several acts, from that time up to the reign of George III., show, by the special exemptions they grant from impressment, that the power of impressment does somewhere exist. And if such power does exist, it must, from the nature of our constitution, as well as the frequent mention of the king's commission, reside in the crown. In the case of the *King v. Jubbs*, Lord Mansfield said, "the power of pressing is founded on immemorial usage, allowed for ages." And Lord Kenyon declared, in a similar case, that the right of impressing is founded on the common law, and extends to all persons exercising employment in the sea-faring line. Any exemption, therefore, which such persons may claim, must depend on the provisions of positive statutes. The freemen and livery of London are not exempted from being impressed for the sea service, if in other respects fit subjects for the service, 9 *East*, 466. Nor is a seaman serving in the merchant service, though a freholder; nor is the master of any vessel, merely as such, exempt, especially if his appointment appear to be collusive, 14 *East*, 346. If a sailor on board a merchant ship be pressed by a king's ship, he is not entitled to any proportion of his wages from the former, unless she complete her voyage, 2 *Campb.* 320. The necessity of naval impressment has been sought to be lessened by a registry of merchant seamen, and the encouragement of the voluntary enlistment of seamen into the royal navy.

**INCEST**, the cohabiting or marrying of persons within the Levitical degrees of kindred, and prohibited by law. In 1650, incest and adultery were made capital offences; they are now cognisable as criminal offences only by the ecclesiastical courts.

**INCOME OR PROPERTY TAX**, is the duty on profits or income arising from property, professions, trade, and offices, and which, by 16 & 17

V. c. 34, was altered and continued from 1853 to April 6, 1860. The chief alterations introduced by the act were the extension, for the first time, of the Income tax to Ireland; second, for the extension of the tax to incomes below £150, but not below £100; third, for the progressive reduction of the tax at intervals of two or three years; and lastly, for its final abandonment in seven years, simultaneously with an equivalent gain to the Exchequer by the expiration of the Long Annuities in 1860. During the term of two years from April 5, 1853, the assessment on property, annuities, dividends, salaries, pensions, profits and gains, would be, for every 20s. of the annual value or amount thereof, 7*d.* During the further term of two years from April 5, 1855, the assessment would be 6*d.* in the pound, and during the further term of three years from April 5, 1857, the assessment would be 5*d.* in the pound. These prospective reductions were suspended by the war with Russia in 1854, and by 17 V. c. 10, additional rates and duties, amounting to one moiety of the whole of the duties payable under the act of 1853, are made chargeable for the year commencing April 6, 1854. In 1855, by 18 & 19 V. c. 20, an additional rate of duty of 2*d.* in the pound was imposed, to continue during the war. By the act of 1853, the 16 & 17 V. c. 34, s. 56, persons knowingly and wilfully inciting or assisting any one to make false returns of profits or value, are subject to a penalty of £50.

**INCUMBENT**, a parochial minister with cure, who either does or ought to reside for the cure of the church to which he belongs.

**IN ESSE** signifies anything in actual being, distinguished from *in posse*, or a thing that is not, but possibly may come into being; such as an unborn child.

**INFANTICIDE**, the practice of putting infants to death, or exposing them, has existed in many countries from the remotest period. Both in the Grecian States and among the Romans, the exposure of infants was a common usage; and it does not appear that it was punished by any legal penalty. In modern times the practice has been permitted in many countries. In China, at least in some parts of the empire, a considerable proportion of the female population are put to death as soon as they are born. Among the Hindoos it was practised to a great extent, until checked by the interference of Lord Wellesley; but, according to Bishop Heber's *Narrative*, it has again revived. "Pay our daughters' marriage portions and they shall live," say the Hindoos. For a female to remain unmarried is not esteemed respectable, and to get married without a portion is next to impossible. In the Polynesian Islands, and among the native tribes of Brazil, infanticide is common. In this country the public has been much indebted to Dr. William Hunter, for the philosophical manner in which he examined the general value

of physiological testimony in proof of the commission of child-murder. Previous to his dissertation on the "Uncertainty of the Signs of Child Murder," in the case of bastard children, it is to be greatly feared that many unfortunate women had fallen the innocent victims of false theory and practice. The floating of the lungs, which had been considered an infallible proof of a child having been born alive, he utterly disproves, and shows that so many accidental causes may produce the death of infants newly born, without criminality in the mother, that it is fair to infer that nothing but unequivocal and direct evidence of violence should be admitted as sufficient proof of guilt. It is certain that the signs of a child having lived after birth, which are to be found in the heart and other parts, supply no positive inference of it unless life has continued for *at least a day*, and then the lungs alone will always suffice for a decision. It is also to be feared that in cases of *sudden* deaths, the testimony of chemists and medical persons to the presence of *poison* from analysis of the contents of the stomach, or the appearances of the victim, is frequently received more confidently than it deserves to be, from the equivocal character and often the extreme difficulty of identifying with certainty the signs of criminal acts. Another subject intimately connected is the period of *gestation*, or that period of time in females which elapses between conception and parturition. On this branch of medical jurisprudence, Dr. Hunter gives the following information:—"1. The usual period of gestation is nine calendar months, but there is very commonly a difference of one, two, or three weeks. 2. A child may be born alive at any time from three months; but we see none born with powers of coming to maturity, or of being reared, before seven calendar months, or near that time—at six months it cannot be. 3. I have known a woman bear a child in a perfectly natural way fourteen days later than nine calendar months; and believe two women to have been delivered of a child, alive, in a natural way, ten calendar months from the time of conception." A child has been held *legitimate* born forty weeks and ten days after the death of the husband.

**INFODATION OF TITHES**, the granting of them to mere laymen, which was prohibited by a decree from the council of Lateran, A.D. 1179.

**INFIDELS**. It would appear from Hawkins, confirmed by some late decisions, that persons not believing in a future state of reward and punishment, or denying the Holy Scriptures to be of divine authority, cannot be sworn to give evidence. But Turks, Gentoos, and Jews may be sworn according to the ceremonies of their own religion, even in criminal trials; and in both civil and criminal cases, the evidence of Quakers, Moravians, and Separatists, is received on their affirmation. A recent instance at the Old Bailey, and a note of Professor Chris-

tian, imply some uncertainty in the practice of the courts in this respect. "I have known a witness," says he, "rejected and hissed out of court, who declared that he *doubted* the existence of a God and a future state. But I have since heard a learned judge declare at *Nisi Prius*, that the judges had resolved not to permit *adult* witnesses to be interrogated respecting their belief of a Deity and a future state. It is, probably, more conducive to the course of justice that this should be presumed till the contrary is proved. And the most *religious* witness may be scandalised by the imputation which the very question conveys," 3 *Bl. n.* 14. A refusal by the Insolvent Court to admit an avowed infidel to the benefit of the statute, calls for the adoption of some uniform principle in the practice of the courts in this respect.

INFORMATION, *in the Exchequer*, is a summary process instituted at the suit of the crown. It is grounded on no writ under seal, but merely on the intimation of the attorney-general, who "gives the court to understand and be informed of" the matter in question; upon which the accused is put to answer, and trial had as in suits between individuals. It is chiefly used to recover penalties for offences against the revenue laws, and for trespasses committed on the lands of the crown.

INJUNCTION, a prompt interference of the Court of Chancery, which restrains the commission of any act by which fraud or injustice may be perpetrated. It may be obtained,—1. To stay waste. 2. To restrain infringement of patent. 3. To preserve copyright. 4. To restrain negotiation of bills, &c., or the transfer of stock. 5. To stay proceedings in other courts. 6. To prevent nuisances. And, lastly, in most cases where the rights of others are invaded, and the remedy by the ordinary course of law is too remote or dilatory, to prevent increasing damage.

INLAND REVENUE. In 1849, by 12 V. c. 1, the boards of commissioners of excise and commissioners of stamps and taxes were formed into one consolidated board of Commissioners of Inland Revenue, such commissioners being appointed during the pleasure of the crown; and all the powers previously exercised by the said boards were invested in the commissioners of Inland Revenue. The powers given may be exercised by three or any prescribed number of commissioners; the limits of their powers being the same as those given to the excise board by 7 & 8 G. 4, c. 53.

INNINGS, lands recovered from the sea in Romney Marsh.

INNS OF COURTS, are four societies in London for students-at-law, qualifying them to be called to the bar: namely, the Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn. Each inn is governed by its own benchers, or ancients, who fill up the vacancies in their own body. Any barrister of seven years' standing may be elected a bencher; but that honour is

now usually conferred only on queen's counsel. The benchers of each inn exercise the power of calling to the bar the members of their own inn. They have also authority to *disbar* a barrister, that is, to deprive him of the privileges they have conferred by calling him to the bar, if they see sufficient reason for such interdiction. The *Inns of Chancery* are eight in number, and are societies subordinate to the Inns of Court, and are principally occupied by the lower branches of the profession; they are Clifford's Inn, Clement's Inn, Lyon's Inn, New Inn, Furnival's Inn, Thavies' Inn, Staple Inn, and Barnard's Inn.

INUENDO is a word used in declarations and law proceedings, to ascertain the meaning of initials or doubtful words, by averring that the sense appropriated to them is the true meaning. Thus, for instance, in action of slander, for asserting of A to B, "*he is a traitor*," it must be averred under an innuendo, in the declaration, that the pronoun *he* means the person A; and that *traitor* means that the said A had betrayed his allegiance.

INROLMENT; that is, the registering or transcribing any deed, recognizance, or other instrument, on a roll of parchment, according to certain prescribed forms and regulations. For safe custody and evidence, it is a common practice to inrol deeds upon the records of one of the queen's courts at Westminster, or at a court of quarter sessions. The certificate of inrolment endorsed by the registrar is generally deemed good evidence of the inrolment. But the inrolment of a deed does not make it a record. A *record* is the inrolment of judicial matter, transacted in a court of record, and of which the court takes notice, but an inrolment of a deed is a private act of the parties concerned.

INSTITUTION is the ceremony by which a bishop commits to the clerk, who is presented to a church living, the cure of souls.

INSTITUTIONS OF CLARENDON are certain institutions made A.D. 1164, in a great council held at Clarendon, in which the king restrained the power of the pope and the clergy, and greatly narrowed the exemptions the latter claimed from the secular jurisdiction.

INVENTORY, a schedule containing a list and true description of goods and chattels, with their appraised value.

IN VENTRE SA MERE, a child unborn, but of which the mother is pregnant. It is applied where a woman is with child at the death of her husband, and which, if it had been born, would have been heir to the estate. In all cases where a daughter or female comes into land by descent, a son born after is entitled to possession.

IPSO FACTO, by the deed itself. So if a person obtain two livings in the church, without being qualified by dispensation, the first living is void *ipso facto*, without any declaratory sentence, and the patron may present to it.

**IRELAND.** The inhabitants of Ireland are partly descended from the English, who planted it as a colony after the conquest of it by Henry II., and the laws of England were then received and sworn to by the Irish nation, assembled at the council of Lismore. Ireland, however, until the late Union, was a distinct State; and, up to the 22 and 23 G. 3, a subordinate kingdom, dependent on the crown of Great Britain. Since these acts, the important measure of a UNION between Britain and Ireland has taken place, by which the national rights and interests of the two countries have been more intimately united and consolidated. By the articles of the Union, which were ratified by act of parliament, July 2, 1800, it is declared that the kingdom of Great Britain and Ireland shall, on the 1st of January, 1801, and for ever after, be united into one kingdom, by the name of the United Kingdom of Great Britain and Ireland; that there shall be one parliament, styled the parliament of the United Kingdom of Great Britain and Ireland: that four lords spiritual of Ireland, by rotation of sessions, and twenty-eight lords temporal, elected for life by the peers of Ireland, shall sit in the house of lords; and one hundred commoners, representing the commons of Ireland, shall sit in the house of commons: that the churches of England and Ireland shall be united into one Protestant episcopal church, to be called the United Church of England and Ireland: that the subjects of both nations shall be entitled to the same privileges with regard to trade and navigation, and also in respect of all treaties with foreign powers: that all bounties and prohibitions upon the importation of merchandise from one country to the other shall cease; but the importation of certain articles specified in the act shall be subject to countervailing duties: that the sinking funds and the interest of the public debts of each country shall be defrayed by each separately: that, for the space of twenty years after the Union, the contributions of Britain and Ireland towards the public expenditure, in each year, shall be in the proportion of fifteen to two: lastly, that the laws and courts of each kingdom shall remain the same as they are now established, subject to such alteration by the United Parliament, as circumstances may require. Since this legislative incorporation, other measures have been adopted for cementing more closely the interests of the two countries. In 1819 an act passed for consolidating the Exchequers of England and Ireland; and, in the session of 1823, various alterations were sanctioned by parliament for facilitating the abolition of the countervailing duties, and placing the mercantile intercourse of the two nations on the footing of the coasting trade. By 6 G. 4, c. 79, the currency of Ireland is assimilated to that of Britain, and all mercantile and pecuniary transactions are declared to be held and understood to be made in the currency of the United Kingdom. By the important

measure of the Catholic Relief Act, 10 G. 4, c. 7, the disabilities to which a vast majority of the Irish population had been subjected were removed, and a community of interest and privilege extended to every individual of the empire. Under William IV. and Queen Victoria various other laws have been passed, for improving the police and constabulary, for the abolition of vestry cess, the reform of juries, the tithe and church establishment, the construction of railroads, amendment of internal navigation, the relief of encumbered estates; and the general spirit of the internal government has been especially directed to discountenance those social divisions originating in the conflicting jealousies of a Catholic and Protestant population. For the assimilation of the laws of the United Kingdom in respect of trade and commerce, see SCOTLAND.

ISLAND, or ISLE, is land inclosed in and environed by the sea or fresh water. According to the civil law, an island in the sea that has no owner, by the law of nations, belongs to him who first discovers it. But, by the law of England, if an island arise in the middle of a river, it belongs in common to those who have lands on each side; or if it be nearer to one bank than the other, it belongs to him who is proprietor of the nearest shore.

ISLE OF MAN. This is a distinct territory from England, and is not governed by English laws; neither does any act of parliament extend to it, unless expressly named therein. It was formerly a subordinate feudatory kingdom, subject to the kings of Norway; then to King John and Henry III. of England; afterwards to the kings of Scotland, and then again to the crown of England; and, at length, we find Henry IV. claiming it by right of conquest, and disposing of it to the Earl of Northumberland, upon whose attainder it was granted to Sir John de Stanley. After several other vicissitudes, on the death of James, Earl of Derby, in 1735, the Duke of Atholl succeeded to the island, as their general by a female branch. In the meantime, though the title of king had long been disused, the Earls of Derby, as lords of Man, maintained a sort of legal authority there, by assenting or dissenting from laws; and no English writ or process was of any authority in Man. Such an independent jurisdiction being found inconvenient for the purposes of justice, by affording a ready asylum for debtors, outlaws, and smugglers, the interest of the then proprietor was purchased by Government in 1765, and the island and its dependencies became vested in the crown, and subject to the regulations of the British excise and customs. The Isle of Man, however, retains its peculiar laws, except as regards the revenue, so that it is still a convenient refuge for debtors and outlaws.



## J.

**JACTITATION OF MARRIAGE** is where a party holds out a *false* pretension of marriage, so as to impose on another a matrimonial liability. The remedy for this injury is in the ecclesiastical courts.

**JEOFAIL** is derived from the French *j'ai faille*, signifying an oversight in pleading, or other law proceeding.

**JERSEY, Guernsey, Sark, Alderney**, and their appendages, formed parcols of the duchy of Normandy, and were united to the crown of England by the first princes of the Norman line. They are governed by their own laws, which are, for the most part, the ducal customs of Normandy, being collected in an ancient book of great authority, entitled *Le Grand Coustumier*. The queen's writ of process from the courts of Westminster is there of no force; but her commission is. They are not bound by common acts of parliament, unless particularly named. All causes are originally determined by their own officers, the bailiffs and jurats of the island; but an appeal lies from them to the queen in council in the last resort.

**JEWS.** For a long period the Jews were the objects of cruel and vindictive persecution; so much so as to be under a proclamation of banishment; and it was only during the protectorship of Oliver Cromwell that their residence in the kingdom became legally tolerated; but the hardships they formerly suffered are now removed, and Jews as well as others participate in the protection of the laws. They are, however, still subject to some disabilities, though, with one exception, they have all been abrogated by an act passed in 1846, which at once swept away a great mass of absurdities that had long, on account of religious opinions, disfigured the statute book. By 10 G. 1, c. 4, persons professing Judaism may take the oath to the government, omitting the words upon the *true faith of a Christian*. A similar indulgence has been extended to them by 8 & 9 V. c. 52, in respect to the municipal offices of mayor, alderman, recorder, to which they have been made admissible by the usual declaration of absence of hostility to the established church. But the Abjuration Act, in which the words *upon the true faith of a Christian* occur, has the effect of excluding Jews from parliament. It is a vulgar error that Jews, though born in this country, are aliens. Jews are British subjects, like any other persons born in England. Sundry barbarisms, enacted under the Edwards and Henrys and Queen Anne, have, as just noticed, been abrogated by the 9 & 10 V. c. 59, and Jews, like the rest of the community, are free to hold and alienate lands and tenements, to endow schools and other charitable foundations, and are not obliged to maintain such of their children as

may become Protestants, or compellable to wear a badge of yellow taffeta.

**JEW-BAIL**, or **SHAM-BAIL**, an opprobrious term for those men of straw who used to hire themselves out as sureties for persons arrested for debt. They are alluded to in *Hudibras* :—

" Or wait for customers between  
The pillars' rows in Lincoln's Inn,  
Where vouchers, forgers, common bail,  
And affidavit men ne'er fail."

**JOINT-TENANTS** are such as hold lands or tenements jointly by one title, and who must jointly plead, and be jointly sued. They are distinguished from tenants *in common*, by the latter holding by several titles, or by one title and by several rights.

**JOINTURE**, a provision for the wife, to take effect in profit or possession after the death of the husband, and continue for her life at least. If a jointure be made to a woman after marriage, she may, after the husband's death, either accept it or claim her dower at common law; for she was not capable of consenting to it during coverture. A jointure is not forfeited by the adultery of the wife, as dower is, and a court of equity will decree against the husband the performance of marriage articles, though he allege and prove that his wife lives separate from him in adultery.

**JOURNALS OF PARLIAMENT** are not records but remembrances, and have been of no long continuance. *Hob. Rep.* 109.

**JOURNIES ACCOUNTS** is a term in law thus understood: if a writ abate by the death of the plaintiff or defendant, or by any defect of form, the surviving party shall have a new writ within as little time as he possibly can after the abatement of the first; and this is called having a writ by *journies accounts*; the second writ being a continuance of the cause, as if the first had not abated.

**JUDGE** is a man who presides in a court duly constituted, declares the law in all matters that are tried before him, and pronounces sentence or judgment according to the law. Some judges are called recorders, but the name does not alter the nature of the office. When the judges are simply spoken of, the fifteen judges of the superior courts of common law are meant, namely, of the courts of Queen's Bench, Common Pleas, and the Exchequer. There are besides five judges in equity. The judges of the superior courts are appointed by the crown, and since 1688 various statutory regulations have been made to secure independence in the discharge of their duties. 13 W. 3, c. 2, enacts that their commission shall not, as formerly, be made *during pleasure*, but during good behaviour; that their salaries shall be ascertained and fixed, but that they be removable on an address of both houses of parliament. Under the 1 G. 3, c. 23, their commissions were made permanent,

notwithstanding the demise of the crown. In 1825, acts were passed to abolish the sale of offices in the courts of Queen's Bench and Common Pleas, and substitute fixed salaries and retiring pensions in lieu of this privilege.

JUDGE, in Cheshire, is to serve on a jury.

JUDICIAL WRITS, such as issue under the private seal of the courts, and not under the great seal of England, and are witnessed, not in the queen's name, but in the name of the chief judge of the court whence they are issued. *Judicial* writs are distinguished from *original* writs, as the latter issue out of chancery, and are witnessed in the queen's name. But the distinction almost ceased under the Uniformity of Process Act, 2 W. 4. c. 39.

JURATS, a sort of aldermen, in many corporations.

JUSTIFYING BAIL. If a man be arrested and puts in bail, the plaintiff's attorney may except against the bail, as being, in his opinion, insufficient. In such case, the bail (or other bail in their place) must *justify* themselves in court, or before a commissioner in the country, by swearing themselves housekeepers, and to possess the other requisites required of them.

JUSTS were martial exercises with spears, on horseback, and differed from *tournaments*, in that the latter were by troops and squadrons, whereas justs were usually between two combatants only.

## K.

KEELMAN are seamen and others employed in the coal trade in the north of England.

KEEP, a strong tower or defence, in the middle of a castle or fortification, of the nature of a citadel.

KEEPER OF THE GREAT SEAL, a high officer of state, created by the mere delivery of the queen's great seal into his custody; and through whose hands pass all grants, charters, and commissions of the queen under the great seal. Since 5 Eliz. c. 18, the offices of lord keeper and lord chancellor have been incorporated.

KING'S BOOK. By the 36 H. 8, c. 3, it is enacted, that commissioners shall be appointed in every diocese, to certify the value of every ecclesiastical benefice and preferment; and, according to this valuation, the first-fruits and tenths were, in future, to be collected and paid. This *valor ecclesiasticus* is what is called the *King's Book*; a transcript of which is given in Ecton's *Thesaurus* and Bacon's *Liber Regis*. But the whole of this document has been printed by the commissioners appointed to examine into the state of the public records, in four volumes folio, and copies distributed to many public institutions.

KNAVE. It is curious to remark the successive variations of

this old Saxon word from its original, *enapa*. At first it signified a boy as distinguished from a girl; it is thus used in Wickliffe's translation, Exod. i. 16, "if it be a *knave child*;" that is, a son, or male child. Afterwards it was taken for a servant boy; as in the *Vision of Piers Plowman* it is said "*cokes and her knaves*;" that is, cook and her boys, or scullions. It was next applied to any servant man; also, for an officer or dependant that bore the weapon or shield of his superior. It is now used in a degrading sense, and applied to a cunning, deceitful fellow.

**KNIGHT.** Some recent interpretations show that *knight* and *miles* have no reference at all to a horse. *Knight*, or *cnicht*, is a boy or youth; and Mr. Turner traces the word from its primitive meaning up to its present, through the gradation of boy, servant, military attendant, sword-bearer, &c. The use of the *miles* is clearly referable to that period in the military history of the middle ages, when the infantry, being a miserable ill-armed force, the wealthier and nobler classes, who fought well-armed on horseback, were the only troops taken any account of, and thought worthy of the denomination of soldiers. The right to confer knighthood was not originally a prerogative of royalty, nor the order a part of the municipal constitution of any State, but a military, and, in some sense, a religious institution pervading all Christendom; and the order might be conferred by any man, who was himself a knight, whether in his own or in a foreign country. And accordingly, to this day, a foreign knight is a knight in England, by our law, though a foreign duke, &c., is only an esquire. *Knight of the Shire* is a gentleman of worth, chosen by the electors, and qualified to sit in parliament for a county or division of a county.

**KYLLINTH-STALLION.** A custom by which lords of manors were bound to provide a stallion for the use of the tenants' mares.

## L.

**LABOUR**, according to political economists, is the only source of wealth, and the value of every commodity depends on the quantity of labour expended in its production. Blackstone, too, considers it the most legitimate foundation of property, and says, that "labour bestowed upon any subject, which before lay common to all men, and subject to the first occupancy, is universally allowed to give the fairest and most reasonable title to an exclusive property therein."

**LACHES** signify, in law, slackness or negligence.

**LAITY** is that portion of a community separate from the clergy.

**LAMMAS-DAY**, the first of August, on which day the tenants that held land of the cathedral church of York, were bound by

their tenure to bring a live lamb into the church at high mass. It is one of the four *cross quarter* days of the year, as they are now denominated. Whitsuntide was formerly the first of these quarters, Lammas the second, Martinmas the next, and Candlemas the last; and such partition of the year was once equally common with the present divisions of Lady-Day, Midsummer, Michaelmas, and Christmas. Some rents are still payable at these old cross quarter days in England, and they continue general in Scotland. The parishioners of many places exercise or claim a right of common, in various plots or fields of open pasture and arable land, from Lammas to Candlemas, in respect of the former, and to All Souls' Day, in respect of the latter. By 6 & 7 W. 4, c. 115, for facilitating the inclosure of common fields, the right to *Lammas-land* will soon be extinguished.

LAND-TAX is a territorial impost, anciently levied under the name of scutage, hydage, and talliage. It was introduced in its present form in the reign of William III., when a new assessment or valuation of estates was made throughout the kingdom; which, though by no means a fair one, had the effect of raising a supply of £500,000, by an assessment of 1s. in the pound on the value of the estates given in. The method of raising it is by charging a particular sum on each county, according to the valuation of 1692, and this sum is assessed and raised on individuals by commissioners appointed in the act, being the principal landholders in the county, and their officers. Up to the year 1798, the land-tax was an annual tax; at that period, with the view of supporting public credit, and augmenting the national resources, it was made perpetual. The last annual act was the 38 G. 3, which imposed the tax for the year at the rate of 4s. in the pound; and it was made perpetual, at that rate, by a statute passed in the same year, the 38 G. 3, c. 60, which has been modified and amended by subsequent statutes. At the same time, the land-tax was made subject to *redemption* by the owner of the land on which it was laid, or, in default of his redeeming it, to purchase by any other person. The sums paid in either case are applied to the reduction of the national debt; and the price is regulated by the price of the funds at the time, being always so much stock in the 3 per cent. Consols, or 3 per cent. Reduced, as will yield a dividend exceeding the land-tax redeemed or purchased by one-tenth. By 46 G. 3, c. 183, the commissioners may exonerate small livings and charitable institutions, the income of which is under £150, from the land-tax without any consideration, provided the annual amount in the whole does not exceed £6000. Under 1 & 2 W. 4, c. 21, lands remaining subject to the *double* land-tax assessment imposed, in the reign of William III., on the estate of Roman Catholics, were relieved on complaint to the commissioners of land-tax. By 2 W. 4, c. 45, s. 22, it is unnecessary

to be assessed to the land-tax to qualify to vote for a knight of the shire.

**LASTAGE**, paid for liberty to bring goods to markets or fairs, and paid by the *last*.

**LAW-MERCHANT** consists of certain usages, that have gradually grown into force in commercial transactions, and the validity of which has been so far allowed by the courts, for the benefit of trade, as to render them a part of the common or unwritten law of England. Such are laws relating to bills of exchange, mercantile contracts, and insurance, which, though claiming no higher authority than the custom of merchants, are as much the general law of the land as the laws relating to marriage or murder. It is not, however, every new practice or device among traders that becomes a part of the law-merchant; before it can become such, it must be sanctioned by long usage and judicial recognition.

**LEASE AND RELEASE**, a conveyance of the inheritance in land, the lease giving first the possession, and the release the right and interest. It was first practised by Serjeant Moore, soon after the Statute of Uses, and was thus performed. A lease, or rather a bargain and sale upon some pecuniary consideration, for one year, was made by the tenant of the freehold to the lessee or bargainee. Now this, without enrolment, made the vendor stand seized to the use of the bargainee, and vested in the bargainee the *use* of the land for a year; and then the statute immediately annexed the possession. Bargainee, being thus in possession, was capable of receiving a *release* of the freehold and reversion, which, by the statute, must be made to a tenant in possession: and, accordingly, the next day a release was granted to him. A conveyance by lease and release amounted to a *feoffment*, and so supplied the place of livery of seisin. But the practice has become obsolete under 4 V. c. 21, by which a release only is made as effectual for the conveyance of freehold estates, as a lease and release by the contracting parties.

**LECTURER**. In London and other places there are lecturers, chosen and paid by the principal inhabitants, who assist the rectors in their spiritual duties, and are usually the afternoon preachers. They must subscribe to the Thirty-nine Articles, and signify their assent to the Common Prayer; and, like other ministers, be admitted and licensed by the ordinary. In some cases, lectures are founded by the donations of pious persons, and the lecturer appointed by the founder, without the interposition of either rector or parishioners, though with the approbation of the bishop. But no lecturer is entitled to the *use* of the pulpit without the consent of the parson, in whom the freehold of the church is vested; they may, however, be licensed

under 7 & 8 V. c. 59, to discharge the duties of assistant curates.

**LETTERS.** The receiver of a private letter has, at most, but a joint property with the writer, and the possession does not give him a licence to publish it, 2 *Atk.* 342. And an injunction has been granted to restrain the printing of letters, without the consent of the executors of the person who wrote them, *Amb.* 737. This rule prevailed in the case of *Hansom and Hobhouse, executors of Lord Byron v. Knight*, 1825; although a strong presumption was shown that his lordship sent them, contemplating the probability that the person to whom they were sent would publish them.

**LETTER OF ATTORNEY**, a writing empowering another person, who in such cases is called the *attorney* of the party, to do any act instead of the person granting the power; as to receive a debt or dividend, transfer stock, sue a third person, sign a deed, or give possession. This instrument may be either general or special; that is, may extend to the transaction of the entire affairs of a person during his absence, or may be restricted to one or more operations. The agent has precisely the power of his principal, in the matters prescribed by the letter of attorney, until revoked. If the power has been given as a security, it is not revocable by the principal. Letters of attorney are generally executed under bond and seal, that is by deed, and when they contain an authority to bind the principal by deed, it is essential that they should be so executed.

**LETTER MISSIVE**, *for electing a bishop*, a letter from the queen to the dean and chapter, inclosing the *name* of the person whom she would have them elect.

**LETTER OF CREDIT** is where a merchant or correspondent writes a letter to another, requesting him to credit the bearer, or a third party named, with a sum of money therein specified.

**LETTER OF LICENCE**, an instrument in writing, given by creditors to a person, allowing him a longer time for the payment of his debts, and protecting him from arrest in going about his affairs.

**LETTERS PATENT**, or *open letters*, are writings sealed with the great seal of England, whereby the grantee is protected in the enjoyment of some discovery, privilege, or advantage.

**LEVANT ET COUCHANT**, applied to the cattle that have been so long on the ground of another, that they have lain down and risen again to feed.

**LEVARI FACIAS**, a writ of execution, directed to the sheriff, for levying a sum of money upon the goods and chattels of a defendant.

**LEX TALIONIS**, the law of retaliation, which subsisted among the Jews, Egyptians, and other ancient nations.





	£	s.	d.
Seller of beer only, not brewers . . . . .	3	6	1 $\frac{1}{2}$
Beer retailers (publicans) whose premises are rated under £20 per annum (England and Ireland) . .	1	2	0 $\frac{1}{2}$
„ at £20 or upwards . . . . .	3	6	1 $\frac{1}{2}$
Retailer of beer, cider, and perry, to be drunk on the premises (England only) . . . . .	3	6	1 $\frac{1}{2}$
„ not to be drunk on the premises . . . . .	1	2	0 $\frac{1}{2}$
Retailer of cider and perry only . . . . .	1	2	0 $\frac{1}{2}$
Retailers of beer, cider, or perry only in Scotland, whose premises are rated under £10 per annum .	2	10	0
„ at £10 per annum or upwards . . . . .	4	4	0
Dealers in coffee, tea, cocoa nuts, chocolate, or pepper	0	11	6 $\frac{1}{2}$
Game, licence to sell (granted by a magistrate) . .	2	0	0
Maltster, making not exceeding 50 quarters . .	0	7	10 $\frac{1}{2}$
Malt roasters . . . . .	20	0	0
Dealers in roasted malt . . . . .	10	0	0
Paper maker . . . . .	4	4	0
Passage vessels, on board which liquors or tobacco are sold . . . . .	1	1	0
Postmasters' keeping 1 horse or 1 carriage . . .	7	10	0
Postmasters (Ireland) . . . . .	2	2	0
Soap maker . . . . .	4	4	0
Spirits—Distiller, rectifier, or dealer, not retailer .	10	10	0
Dealers for retailing foreign liqueurs . . . . .	2	2	0
Makers of stills, Scotland and Ireland . . . .	0	10	6
Chemist or any other trade requiring the use of a still, England . . . . .	0	10	0
„ Scotland and Ireland . . . . .	0	10	6
Retailers of spirits whose premises are rated under £10 per annum, England and Ireland . . . .	2	4	1
Retailers of spirits and beer, whose premises are rated under £10 per annum, Scotland . . . . .	4	4	0
Retailer of spirits in Ireland, being duly licensed to sell coffee, tea, &c., whose premises are rated under £25 per annum . . . . .	9	18	5 $\frac{1}{2}$
Sweets retail, United Kingdom . . . . .	1	2	0 $\frac{1}{2}$
Tobacco and snuff, manufacturers of tobacco and snuff, not exceeding 20,000 lbs. . . . .	5	5	0
Exceeding 20,000 lbs. and not exceeding 40,000 lbs.	10	10	0
Dealers in tobacco and snuff . . . . .	0	5	3
Vinegar makers . . . . .	5	5	0
Wine, dealers in foreign wine, not having licences for retailing spirits and beer . . . . .	10	10	0
„ having a licence for retailing beer, but not for retailing spirits . . . . .	4	8	2 $\frac{1}{2}$
„ having licences to retail beer and spirits . .	2	4	1
Stage carriage, licence to run in Great Britain .	3	3	0

	\$	s.	d.
Stage carriage, Supplementary licence . . . . .	0	1	0
Hackney carriage, licence to keep, London . . . . .	1	0	0

[These licences are issued by the commissioners of police.]

**LIEGES**; that is, dependants. *Liege-people* are the queen's subjects, or the vassals of their superior.

**LIGHTER MEN**, persons employed in the carrying of goods to and from ships, in barges or lighters, on the River Thames.

**LIMITATION**, of action, see p. 41.

**LINEAL ANCESTOR** is a father or grandfather in a right line. It is curious to remark the number of ancestors which every man has, within no very great number of degrees; and so many different bloods is a man said to have in his veins as he has lineal ancestors. Thus, if he have two in the first ascending degree, his own parents, he has four in the second, the parents of his father and the parents of his mother; he has eight in the third, the parents of his two grandfathers and two grandmothers; and, by the same rule of progression, he has a hundred and twenty-eight in the seventh; a thousand and twenty-four in the tenth; and at the twentieth degree, or the distance of twenty generations, every man has above a million of ancestors, as may be exemplified by continuing the geometric series to that number. *Collateral kindred*, which descend from two branches instead of one, increase at a much faster rate; for these increase in a quadruple instead of a duplicate ratio: so that at the fifteenth remove, a man will have nearly 270 millions of collateral relatives, living or dead.

**LIVERY**. A suit of clothes, as a cloak or gown, which a nobleman or gentleman gives to his servants or followers, mentioned in 1 R. 2. c. 7, and other statutes. It also signifies delivery, as *livery of seisin* is a delivery of possession of lands and tenements to one that has a title to them.

**LIVERYMEN OF LONDON**; so called, because they formerly wore liveries or badges peculiar to each company. They are a numerous and respectable body of the city, chosen from among the freemen of the different guilds or incorporated trades. They are compelled to hold the office without some reasonable excuse to the contrary; and on refusal to serve may be fined, and action of debt brought for the recovery of the penalty; but they cannot be imprisoned, 1 *Mod. Rep.* 10. By 11 G. 1, c. 18, liverymen who have been twelve months on the livery are entitled to vote for members of parliament, and by charter, for the election of the lord mayor, chamberlain, sheriffs, &c. See next article.

**LONDON, THE CITY OF**, is the inner or ancient central portion of the British capital, which is under the jurisdiction of its municipal corporation. By the 11 G. 1, c. 18, the right of election of aldermen and common-councilmen for the several wards

is declared to pertain to freemen of the city, being householders, paying scot and bearing lot in their respective wards; the houses occupied being of the real value of ten pounds a year at the least, and the householder the sole occupier, and having been in possession of such house in the ward where the election is made for twelve calendar months next before the election. By a local act of 1849, the 12 & 13 V. c. 94, s. 2, to amend the 11 G. 1, it is enacted that at any election for alderman, common-councilman, or ward-officer, "every freeman of the city (not subject to legal incapacity) who shall occupy within the city or liberties either solely or jointly with any other person, any house, warehouse, counting-house, office, chamber, or shop, and shall, in the case of a sole occupation, be rated in his own name to an amount not less than ten pounds, or, in case of a joint occupation, be rated in the joint names of the occupiers, to an amount not less than ten pounds for each occupier, to the police or other rate, and who shall be registered in the register of voters for the city, in use for the election of members of parliament, and then in force in respect to such premises, shall be entitled to vote in any election for alderman, common-councilman, or ward-officer." Aldermen and common-councilmen, on November 1st in every year, to make out an alphabetical list of all freemen occupiers entitled to vote under the Act; the list to be signed by the alderman of the ward; the ward clerk to keep a true copy of the list, open to perusal by any person, without payment of fee, at reasonable hours, from the 1st to the 15th of November, and at all times to deliver a copy of the list to any person requiring it, on payment of a reasonable price. By s. 5, every freeman occupier, qualified as above to vote at an election, is qualified to be elected a common-councilman of the ward in which his premises are situated. A declaration to be made by the voters in lieu of an oath, and, if false, punishable as perjury. Any alderman or common-councilman becoming bankrupt or insolvent, or making any composition with his creditors, or absenting himself from his duty above six calendar months consecutively, unless prevented by illness or other reasonable cause, or convicted of fraud or any crime, shall cease to hold the office of alderman or common-councilman: persons compounding with creditors, and afterwards paying debts in full, qualified to be re-elected. See *Metropolis*.

**LUNATIC ASYLUMS.** These are of two kinds, either such as are established by private individuals for the reception of insane persons, or such as are erected by the county, or in municipal boroughs, chiefly for the care of pauper and criminal lunatics. The abuses to which these receptacles are liable have given rise to various attempts at preventive legislation, by which they are subject to occasional inspection, and the control of a special jurisdiction. For lessening the delays and expenses attending

the execution of writs *de lunatico inquirendo*, and regulating proceedings in the case of the estates of lunatics, the 16 & 17 V. c. 70, partly repeals and consolidates the acts in force from 6 G. 4, c. 53, to 15 & 16 V. c. 87. By s. 6, Lord Chancellor is empowered to appoint two masters in lunacy, with full power of commissioners, and before whom all references connected with lunatics are to be made, each master receiving a salary of £2000 with retiring pension. Two medical visitors and one legal visitor to be appointed; the masters are visitors *ex officio*. Expenses to be defrayed by fees on proceedings, and by a fixed percentage on the clear annual incomes of lunatics, commencing at 4 per cent. on incomes between £100 and £1000, and decreasing to 2 per cent. on incomes of £5000 and upwards. Rate of fees and percentage may be altered by order of Lord Chancellor. If alleged lunatic demand a jury, the Chancellor may examine as to his competency, and order a jury, s. 41. After return of inquisition, masters to inquire as to next of kin, and they are to have notice of proceedings, s. 75. Lunatics to be visited at least once a year; medical and legal visitor may visit either together or in succession, and report to the Chancellor. The remaining clauses to s. 153 chiefly relate to the administration of the estates of lunatics, and the powers of the Lord Chancellor. The other acts, the 16 & 17 V. caps. 96 & 97, are too copious and technical in their details, or of too limited interest, to allow of useful abridgment. By 19 & 20 V. c. 87, where a committee of justices of the county has been appointed for providing an asylum, the recorder of a borough within the county may, at the general quarter sessions after passing the act, appoint two justices to be members of the committee.

**LUXURY.** The various sumptuary laws to restrain excess in apparel are repealed by 1 Jac. c. 125.

## M.

**MAGNA CHARTA**, the great charter of liberties granted by, or rather extorted from, King John, and afterwards, with some alterations, confirmed in parliament under his successor. It was called Magna Charta on account of its great importance, and to distinguish it from another charter, the *Carta de Foresta*, which was granted about the same time. The laws contained in Magna Charta are the earliest written declaration of the liberties of the subject as opposed to the arbitrary will of the crown.

**MAIDEN ASSIZE.** When no person is condemned to die at a circuit town, it is called a *maiden assize*.

**MAINOUR**, the goods or articles stolen by a thief, and found in his possession.

**MAINPRISE**, the delivery of a person into friendly custody,

upon security that he shall be forthcoming at the time and place assigned; it differs from *bail* in that a person bailed is not supposed to be at large, but in the ward or actual keeping of his sureties.

**MALA IN SE** are acts unlawful and bad in themselves: as theft, murder, perjury, and the like.

**MANDAMUS**, the name of a writ, issuing in the queen's name, from the Court of Queen's Bench, directed to any person, corporation, or inferior court, requiring them to do some specified act, which appertains to their office and duty. It is a high prerogative writ, of a most extensive remedial nature, and issues in all cases where a party has a right to have anything done, and has no other *legal means* of compelling its performance. A mandamus lies to compel the admission or restoration of the party applying to any office or franchise of a public nature, whether spiritual or temporal; to academical degrees, to the use of a meeting-house, &c. It lies for the production, inspection, and delivery of public books and papers; for the surrender of the regalia of a corporation; to oblige bodies corporate to affix their common seal: to compel the holding of a court; and for an infinite number of other purposes. As the writ of mandamus is exclusively confined to the Court of Queen's Bench, and has been called one of the *flowers* of that court, no writ of error will lie to any other jurisdiction, if there should be anything improper either in the granting of it or in the proceedings under it. We have said that a mandamus does not lie unless the party has no other *legal remedy*. Thus, it does not lie to the governor of the Bank of England to transfer stock, because the party has his remedy by *assumpsit*; nor to insert certain persons in a poor's rate, though the omission is alleged to have been to prevent their having votes for members of parliament. The court will not award a mandamus for licensing a public-house; nor to compel admission to the degree of a barrister: nor to compel any of the inns of court to admit a person as student, or to assign reason for refusing to admit him, *Wooler v. Society of Lincoln's Inn. K. B. Mich. T., 1825.* Nor for a fellow of a college, where there is a visitor; nor to the College of Physicians, to examine a doctor of physic, who has been licensed, in order to his being admitted a fellow of the college; nor to restore a minister of an endowed dissenting meeting-house; for, if he had been regularly admitted, he has his remedy by action. The mode of burying the dead was a matter of ecclesiastical cognizance; and therefore, where the question was whether a parishioner had a right to be buried in a churchyard, in an *iron coffin*, which was a new and unusual mode of interment, the court refused to interfere. The 1 W. 4. c. 21, facilitates the proceedings in prohibitions, and on writs of mandamus.

**MANIFEST**, a statement of the name and tonnage of a ship, the name of the master, the amount and description of the cargo, and, in short, every particular connected with the voyage, and the parties interested therein. All British ships are required to have manifests on board, and no goods can be imported without such document, under a penalty of £100.

**MANSE**, a habitation or farm. In Scotland, every minister is entitled to a competent manse, as well as a stable, barn, byre, and other offices, with a garden, excepting the minister of a royal burgh.

**MANSION**, the lord's chief dwelling house within his fee; otherwise called the capital messuage or manor place.

**MANUFACTURES** are, strictly, such articles of utility as are produced by the *hand* only, but the term is applied to commodities produced by the joint operation of machinery and manual labour.

**MARCHES**, the boundaries or limits between two countries, as between England and Wales, or between England and Scotland. *Lords Marches* were those noblemen that lived on the marches of Wales or Scotland, who formerly had their peculiar laws, and exercised almost regal authority; abolished by 27 H. 8. c. 26.

**MARCHET**, in the ancient British, *Gwabr Merchet*, or "maid's fee," is a composition of 10s. paid by the tenant, on the marriage of his daughter, to the lord, on condition of the latter waiving his claim to sleep the first night with the bride. The custom, with certain modifications, is observed in some parts of England and Scotland, and in the manor of Dinevor, in the county of Carmarthen.

**MARK**, an ancient coin; the mark of silver was 13s. 4d.

**MARK TO GOODS** is what ascertains the property or quality thereof. If a person use the mark of another, with *intent* to injure him, and he sustain damage thereby, an action on the case lies.

**MARKET** is a lesser kind of fair, held by grant or prescription. Formerly markets were chiefly held on Sundays and holidays, for the convenience of those who had assembled to hear divine service. They are prohibited on those days, by 29 Car. 2, c. 7.

**MARQUE and REPRISAL**, *Letters of*, are used for the commissions granted to individuals to fit out privateers in time of war to cruize against the enemy; the owners giving security to the Admiralty not to infringe the rights of nations with whom the country is at peace. But at the outset of the late war with Russia, England publicly announced her intention not to exercise the belligerent right of allowing privateering. It was abandoned by all the powers at the Peace Congress at Paris in 1856.

**MARTIAL LAW** is law as it is administered by courts-martial. It does not consist of a settled code, but of Articles of War,

promulgated at the pleasure of the crown, by the provisions of the Mutiny Act; and, according to Sir M. Hale, is something rather tolerated than established. During insurrection or rebellion, when, in consequence of the ordinary process of general law becoming ineffectual for the security of life and property, in a district or province, the legislature has allowed that a military force shall be employed to suppress the disorder, and secure the offenders; and when the trial of the latter takes place according to the practice of military courts, such district or province is said to be subject to *martial law*. On the occurrence of such emergency, parliament usually suspends, for a period, the Habeas Corpus Act. In merely local tumults the military commander is called upon to act with his troops when the civil authorities have failed in preserving peace, and the responsibility of employing soldiers on such occasions devolves entirely on the magistrate resorting to their aid. The military officer must in this case effect by force what by other means could not be effected; and for the consequences the officer can be only answerable to a court-martial. Before employing the military in such tumultuous disturbances, the Riot Act is mostly read.

MARINES, men embodied to serve as soldiers on board ships of war, or on shore in the event of coast battles. In the British navy they also occasionally assist in some of the operations connected with the working of the ship; they cannot, however, be sent aloft at the command of a naval officer. No commission in the Marines is obtained by purchase; the officers rising by seniority, as high, however, only as the rank of colonels-commandant.

MASTERS IN CHANCERY are assistants to the lord-chancellor, vice-chancellors, and master of the rolls: they were either *ordinary* or *extraordinary*; the masters in *ordinary* were twelve in number, and had referred to them interlocutory orders for examining accounts, estimating damages, and the like: they also administered oaths, took affidavits, and acknowledgments of deeds and recognizances. The *extraordinary* masters, who are usually solicitors, are appointed to act in the country, and discharge similar duties in the several counties of England, ten miles from London. But the delay and expense in proceedings before the *masters in ordinary* caused their office to be abolished in 1852 by 15 & 16 V. c. 80, and their duties to be transferred to the judges of equity, assisted by chief and junior clerks. *Master of the Queen's Bench* is a chief clerk of that court, to whom the court refers when they wish to be informed of any matter. He taxes all bills of costs, records civil actions, has the custody of recognizances, and does other important duties.

MATRICULA, a register; hence, to be entered on the register of the universities is to be matriculated there.

**MAUNDY THURSDAY.** The practice of feeding, clothing, and distributing money to indigent persons on this day, appears to have been first introduced into this country in the year 1563, by Edward III. The custom has continued, without intermission, to the present period; and yearly, on Maundy Thursday, the lord almoner, or, in his absence, the sub-almoner, attends for that purpose in Whitehall Chapel.

**MAXIMS IN LAW.** What proverbs are in common life, maxims are in law, and hold nearly the same authority in legal adjudications as acts of parliament. They form part of the general customs or common law of the land, and are determined by the judges. The maxims in the law-books are too numerous to be inserted; the following is a selection of the principal:—

New laws abrogate those preceding which are contrary to them.

● He who desires the benefit ought to bear the charge, 1 *Co.* 99.

The king is greater than any single person, less than all, *Bract.* lib. i. c. 8.

The king is a mixed person, partaking of the priesthood as well as the laity, 5 *Co. Eccl. L.*

No one is bound to criminate himself.

No one can be witness in his own cause.

A prison is for safe custody, not for punishment, *Co. Lit.* 260.

He confirms an use who destroys an abuse, *Moor,* 764.

The consent, not the junction, of the parties makes the marriage; and they cannot consent before marriageable years, 6 *Co.* 22.

A contract founded in evil, or against morality, is void, *Hob.* 167.

Conditions against law are void.

The appointment of judges is by the king; their jurisdiction by the law, 4 *Inst.* 74.

God can only make an heir, *Co. Lit.* 7.

Deceit is not purged by circuitry, *Bacon.*

1 Clandestine gifts are always suspicious, 3 *Co.* 81.

In cases of extreme necessity everything is in common, *W.P.C.* 54.

In criminal cases the proof ought to be clear as daylight 3 *Inst.* 210.

A judge ought always to look to equity, *Jenk. Cent.* 45.

✓ A judge is the law speaking, 7 *Co.* 4.

Public rights are to be preferred to private, *Co. Lit.* 130.

Justice strengthens the throne, 2 *Inst.* 140.

✗ Intent without act is not punishable.

✓ The law speaks to all with the same mouth, 2 *Inst.* 184.

✗ Long possession is the law of peace, *Co. Lit.* 6.

As corn comes from the ear, so a bastard comes by a mistress, *Co. Lit.* 224.



It is better to recede than proceed badly, 4 *Inst.* 176.

The naming of one thing is the exclusion of another.

He who does a thing by the agency of another does it himself.

Malice is held equivalent to age.

Right cannot die, *Jenk. Cent.* 100.

The church is to be more favoured than the parson, *Godol. Rep. Can.* 172.

To refer errors to their principles is to refute them, 3 *Inst.* 15.

Every man's deed shall be taken most strongly against himself.

Every one is presumed to contemplate the probable consequence of his own act, 4, *Criminal Law Report*, 20.

He confesses his guilt who flies from judgment, 3 *Inst.* 14.

It is fraud to conceal fraud, 1 *Vern.* 240.

It is the same thing to say nothing and not to say sufficient, 2 *Inst.* 178.

Ignorance of the fact excuses; but not ignorance of the law, 1 *Co.* 177.]

Ignorance is the greatest blemish in mechanics, 11 *Co.* 54.

Impunity always invites to greater crimes, 5 *Co.* 109.

Want of power excuses the law.

Everything may be annulled by the same means that made it.

Bad grammar does not vitiate a deed, 9 *Co.* 48.

The law compels no one to do things useless or impossible.

What an *attempt* is, the law has not defined, 6 *Co.* 42.

It matters not what is known to the judge, if it be not known judicially, 3 *Buls.* 115.

No simile is the same, *Co. Lit.* 3.

The best interpreter of a statute is the statute itself, 8 *Co.* 117.

He is the father whom the marriage shows to be such, *Co. Lit.* 123.

One eye-witness is better than ten ear ones, 4 *Inst.* 279.

What necessity forces, it justifies, *H. H. P. C.* 54.

A strumpet is a sufficient witness to a fact committed in a brothel, *Moor*, 817.

Agreement overrules the law, 2 *Co.* 73.

A multitude of ignorant persons destroys the court.

No one shall fill two offices, 4 *Inst.* 100.

Offences the most difficult to guard against ought to be most severely punished.

He who cannot pay in purse must pay in person, 2 *Inst.* 173.

Lastly, the title of an Englishman's liberties is older than the oldest title to any estate.

*Equitable Maxims.*—The following are the maxims which are said to govern courts of equity:—

He that will have equity done to him must first do it to the other party.

He that has committed iniquity shall not have equity.

Equality is equity, *Hob.* 224.

Equity suffers not a wrong to be without remedy.

Equity relieves against accidents.

Prevents mischief.

Prevents multiplicity of acts.

*Regards length of time.*

Will not suffer a double satisfaction to be taken.

Suffers not advantage to be taken of a penalty or forfeiture, where compensation can be made.

It regards substance, not ceremony.

Where equity is equal the law must prevail.

A verdict at law is a bar to equity, 1 *Vern.* 176.

**MEDICAL JURISPRUDENCE** is defined a science by which medicine and its collateral branches are made subservient to the construction, elucidation, and administration of the law, and to the preservation of the public health. It resolves itself into two great divisions—*Forensic Medicine*, comprehending the evidence and opinions necessary to be delivered in courts of justice; and *Medical Police*, embracing the consideration of the policy and efficiency of the legal enactments for the purpose of preserving the general health of the community. It is a science of the greatest importance to the just investigation of cases of poisoning, homicide, rape, abortion, lunacy, nuisances, and insurance of lives.

**MERCHANT** is one who buys or trades in commodities; but the term is usually restricted to those who deal wholesale, or are engaged in foreign commerce. By the Jury Act, 6 G. 4, c. 50, all persons entered on the Special Jurors' Book as "merchants" are eligible to serve on special juries.

**MERTON**, *Statute of*, is the 20 H. 3, passed in the year 1236, in a convent of Augustine canons, situate at Merton, seven miles from London, whence its name.

**MESNE**, the law term for middle or intermediate. It is applied two ways; *first*, to any incidental issue, pending a lawsuit, upon some collateral interlocutory matter, as to summon juries, witnesses, and the like. *Second*, mesne process is used in contradistinction to *final* process, or process of execution, and signifies all such process as intervenes between the beginning and end of a suit. To arrest on mesne process is to arrest in the middle of a suit before trial and judgment, and is abolished. See p. 369.

**MESSAGES**, in a parliamentary sense, are of three kinds:—  
1. From the crown to either house of parliament. 2. From the commons to the lords. 3. From the lords to the commons. In the presentation of the first, a minister, being a member of the house of commons, appears at the bar of that house, and

being called upon by the speaker, brings up the royal message in writing, which is then read from the chair, and immediately taken into consideration, or a time appointed for that purpose. Messages from the crown to the house of lords are delivered in at the table by the minister who leads in that house, or by the lord chamberlain; they are then handed to the lord chancellor, read from the woosack, and proceeded with as in the commons. Messages from the lords to the other house are conveyed by two masters in chancery, and when they relate to the sovereign, or any member of the royal family, by two of the judges. These messengers appear at the bar accompanied by the serjeant-at-arms bearing the mace; and making three obeisances, they advance to the table of the house, and deliver the communication with which they may have been charged. Messages from the lower to the upper house are conveyed by members of the house of commons, who are conducted to the bar of the lords by the gentleman, or, in his absence, by the yeoman usher, and there deliver their message to the lord chancellor, who comes down from the woosack to receive it. Each house usually returns answers by messengers of its own. *Dod.*

— **MESSUAGE**, a dwelling-house with land annexed.

**METROPOLIS**, or London, the capital of the British empire, includes the cities of London (see *London*) and Westminster, and the borough of Southwark, environed by numerous large suburban parishes, within the distance of six miles from the central point of St. Paul's cathedral, and together, for the purposes of police and registration, forming one vast aggregation of localities, connected by continuous lines of houses. In the session of 1855, an elaborate statute was framed by Sir Benjamin Hall for improving the management of the metropolis, and which made important changes in its local administration. The Act is the 18 & 19 V. c. 120, and is comprehensive but definite in its purposes. It does not interfere with the police of the capital, or supply any deficiencies in the municipal government of its inhabitants; but supersedes by new creations previous existing commissions and parochial boards in respect of sewerage, drainage, paving, cleansing, and lighting. In place of these authorities, and for the purpose of improved local management, vestries are to be elected by the *rated householders*, consisting of not less than 18 or above 120 qualified members. In addition, a Metropolitan Board of Works and District Boards of Works are to be instituted; the members of the former to be elected by the vestries of the large parishes, and by the district boards formed by the union, and chosen by the vestries of the smaller parishes. The basis of the Act is the representative principle, in primarily vesting local affairs in vestries elected by the rated inhabitant householders. The city of London is not included

in its operations, further than by returning three members to the Metropolitan Board of Works, which has entire control of the various sewers of the capital and its environs. By 19 & 20 V. c. 112, the powers of the board are declared to extend to authorise applications to parliament for providing parks, pleasure grounds, or places of recreation, the expenses to be defrayed as other expenses. A district board or vestry is empowered to take land by agreement or gift, to be maintained as an open place or pleasure ground.

**METROPOLITAN**, or chief bishop, is so called because consecrated at first in the metropolis of his province, and is styled archbishop in respect of the bishops under him. The former is *enthroned*, the latter *installed*.

**Mews**, anciently the falconry, or place for keeping hawks; it is now applied, in London, to stabling for horses.

**MILITIA** is, according to Blackstone (1 Bl. 410), the national soldiery, or standing army; raised, disciplined, and paid according to the Consolidation Act of 1852, the chief points of which have been stated, p. 274.

**MILLERS**. By 36 G. 3, c. 85, scales are to be kept in every cornmill, which may be examined by the persons appointed under 35 G. 3, c. 102, on penalty of 20s. Millers are to weigh corn, if required, before and after ground, on pain of 40s. No corn shall be taken for toll, on pain of £5, except where the party has no money. But this does not extend to ancient mills, where a right to take toll has been established by custom or prescription. Millers are to put up in their mills a table of prices, on penalty of 20s. These acts do not extend to *private* mills.

**MISE**, in French, a term for law expenses. *Mise money* was formerly money given by way of contract or composition to purchase some liberty or franchise. An honorary gift or customary present, from the Welsh, to every new king or prince of Wales, anciently given in cattle, corn, or wine, was denominated a *mise*.

**MISSAL**, the mass-book, containing the daily ritual of the mass.

**MITRE**, the episcopal crown. *Mitred abbots* were the heads of religious houses, who obtained the privilege of wearing the mitre, ring, gloves, and crosier of a bishop.

**MITTIMUS**, a writ for the removal of records. It is also a precept, in writing, under the hand and seal of a magistrate, directed to the gaoler, for the receiving and safe custody of an offender till he is delivered by law.

**MIXED ACTIONS** partake of the twofold nature of real and personal actions, having for their object the demand and restitution of real property, and also personal damages for the wrong sustained.

**MONARCHY**, that form of government in which sovereign power is entrusted in the hands of a single person, 1 *Bl. Com.* 48.

**MONEY**, a symbol or representative of value, by which payments are made, and the subdivision and interchange of commodities facilitated. The Saxon word *monet*, the German *munzt*, the French *monnaie*, the Italian *moneta*, and the Spanish *moneda*, are all derived from the same Latin root of *moneo*, to advise. Metallic money derives authority to be current from the impress and command of the sovereign. See *Gold* and *Silver*.

**MONSTER** is one born without the human shape: such cannot purchase or hold land; but a person may be heir to his ancestor, though deformed in some part of his body, *Co. Lit.* 7. A monster shown for money is a misdemeanor, *Car.* 2, *Harrin v. Walrond*. This was the case of a malformed child, which was embalmed to be kept for show, but was ordered by the lord chancellor to be buried within a week. What constitutes a monster is left by jurists vague and undetermined; there are few authenticated instances of monsters having long survived the period of their birth; and perhaps the safest criterion of monstrosity would be to exclude every production from that description which is possessed of reason and the power of prolonged existence.

**MONTH**, a period of time, and is either *lunar* or *solar*; the *lunar* month contains four weeks, or twenty-eight days; the *solar* or *calendar* month contains twenty-eight, thirty, or thirty-one days. The month, by the common law, is the lunar month of twenty-eight days; and, in case of condition for rent and enrolment of deeds, the month is computed at twenty-eight days; and generally in all cases where a statute speaks of months, without specifying *calendar* months; but where a statute accounts by the year, half-year, or quarter, then it is to be reckoned according to the calendar. In *commercial* matters a month is held to mean a calendar month, 2 *Car. & K.* 19. A twelvemonth in the *singular* number includes the whole year, according to the calendar; but twelve months, six months, &c., in the *plural* number, include only so many months of twenty-eight days. See *Calendar* and *Year*.

**MOOT**, a term anciently applied to the fictitious arguing of cases, by which students in law were exercised and trained for the defence of clients. In the north of England *Moothall* is a term used for the building where sessions are held.

**MORTUARIES**, customary gifts, claimed in many parishes by the incumbent, on the death of his parishioners.

**MOSS-TROOPERS**, bands of free-booters, who formerly infested the Borders, living by robbery and rapine.

**MOTHERING SUNDAY**, Midlent Sunday, on which day a custom formerly prevailed of visiting parents. *Covel*.

**MOTION**. Application to the court in order to obtain some

rule of order necessary to the progress of a suit, and is usually grounded upon affidavit, made before a proper officer, to evince the truth of the facts upon which the motion is made.

**MULTURE**, the tolls that millers take for grinding corn.

**MUNICIPAL LAW** is that law which is not *local* or *temporary*, but the general, permanent, and uniform law of a country.

**MUNIMENT-HOUSE**, a small room or house of great strength, in castles, colleges, or cathedrals, for the safe keeping of records, charters, and documents.

**MURAGE**, a toll anciently taken of every cart and horse, for the repair of the city walls. *Blount*.

**MUTE**. Standing mute is refusing to answer, or answering foreign to the purpose, when arraigned of treason or felony. It amounts to a constructive confession, and is equivalent to pleading guilty. See *Peine Forte et Dure*.

**MYSTERY**, an art, trade, or occupation.

## N.

**NATURALIZATION** can only be granted by act of parliament, for by this an alien is put in the same situation as a natural-born subject; except that he is incapable, as well as a denizen, of being a member of parliament or of the privy council.

**NAVIGATION LAWS**, the name commonly applied to those statutes which have had for their object the securing of the carrying trade of the country to British-built ships, owned and navigated by British subjects. Some traces of this legislation are to be found in acts passed by Richard II., in 1381 and 1390; though in general the ancient policy of England seems to have afforded no protection to shipping by means of exclusive privileges. From an early period, as well as at present, under the advanced revelations of economical science, the advantages of the cheapness of commodities to the general well-being of the community appear to have been apprehended. Thus Bacon remarks in his *Life of Henry VII.*, "that almost all the ancient statutes incite by all means to bring in all sorts of commodities, having for end cheapness, and not looking to the point of state concerning the naval power." Richard II., however, from his "care to make his realm potent at sea as well as by land," passed an act prohibiting the importation of Gascon wine, except in English vessels. From this period may be dated the commencement of that policy which was matured in an act passed by the Long Parliament in 1651, and afterwards confirmed by 12 Car. 2, c. 18. The protective system, established by the former statute, had continued to be steadily maintained for nearly two centuries after. It was considered even by Adam Smith to form an exception to his general principle of free

trade, by encouraging, if not maintaining, our maritime ascendancy. But the exclusive code was at length, partly from necessity, and partly under the influence of enlarged views of commercial policy, relaxed. The United States of North America had already passed their Navigation Act, and the continental States intimated their intention of following the example, unless Britain mitigated her discriminative laws. The Government prudently yielded to these intimations by concluding reciprocity treaties with Prussia and other powers. Longer adherence could only have ended in establishing an international code of navigation laws, mutually detrimental to nations; and as England had most ships to employ, and most commodities to exchange, she would of necessity have been proportionally the greatest sufferer from such general retaliative policy. For the relaxations in the Navigation Laws, and almost their entire abolition, see p. 347.

**NAVY BILLS** are issued from the Navy-Office, to meet any exigency in that branch of public expenditure; and they bear interest after a certain date if not discharged. They are made out at ninety days' date, and negotiated as bills of exchange.

**NEAT** or **NET**, the true weight of a commodity, without the cask, bag, or dross.

**NEATGELD**, a rent or tribute paid in cattle.

**NE EXEAT REGNO**, a writ to restrain a person from leaving the kingdom without the queen's licence. Where a suit is in equity for a demand for which the defendant cannot be arrested in an action at law, upon affidavit made that there is reason to apprehend he will leave the kingdom before the conclusion of the suit, the lord chancellor, upon a bill filed, will, by his writ, stop him, and commit him to prison, unless he produce sufficient sureties that he will abide the event of the suit. See *Absconding Debtors*, p. 377.

**NEIF**, in French, **NAÏF**, a bondwoman, or female villain.

**NEMINE CONTRADICENTE**, words used to express the unanimous consent of either house of parliament to a vote or resolution.

**NEXT OF KIN**, the wife of a testator is not included in the meaning of the words "Next of kin," for she is no relation to her husband in the sense in which that phrase is used, because it means kindred by blood only, and the wife is no relation by blood or affinity—*non affinis sed causa affinitatis*; but in cases of intestacy, the widow is entitled to a distributive share.

**NIGER LIBER**, the black book, or register in the Exchequer, is called by that name; several chartularies of abbeys, cathedrals, &c., are distinguished by a similar appellation. The term *Black Book* has been applied to a well-known publication, exhibiting the abuses of the Government in church and state, courts

of law, corporations, and public offices and companies, before the passing of the Reform Act of 1832, followed by other acts of amendment.

**NIGHT, in law**, is the interval between sun-set and sun-rise, when it is so dark that the countenance of a man cannot be clearly discerned. In some acts of parliament the limits of the nocturnal hours are more definitely fixed; as in 9 G. 4, c. 69, for the punishment of poaching, *night* is deemed to begin at the expiration of the first hour after sun-set, and to conclude at the beginning of the last hour before sun-rise; and *day-time*, by the *Game Act*, is the interval between these nocturnal hours. In 1 V. c. 87, *night-time*, pending which a burglary may be committed, extends from nine in the evening to six next morning.

**NIHIL, or NIL DICIT**, is a failing by the defendant to put in an answer to the plaintiff by the day assigned, which, being omitted, judgment is had against him of course, as saying nothing why it should not.

**NIHILS, or NICHILS**, are issues concerning debts, which the sheriff answers as *nothing* worth, by reason of the insufficiency of the parties from whom due.

**NISI PRIUS**, one of the five commissions to justices of assize, whereby they are empowered to try issues of fact with the intervention of a jury. Before the judges regularly went circuits, all causes were triable at Westminster during the four great festivals or terms of each year, and writs of *distringas* were directed to the sheriffs of counties, commanding them to distrain the empanelled juries to appear at a certain day at Westminster, to try the causes issuing out of each county; *except before* that day the judges should come to hold an assize. It is from this saving clause in the writ the term is derived, the language of the writ to the sheriffs running "*nisi prius* justici domini regis ad assisas capiendi venerint;" that is, *unless before* the judges come to hold assizes in the county.

**NOBLE**, an ancient coin, used in the reign of Edward III., of 6s. 8d. value.

**NOLLE PROSEQUI** is where a plaintiff declines proceeding further in his action, and may be *before* or *after* a verdict, though it is usually *before*, and is then stronger against the plaintiff than a nonsuit, which is only a default in appearance; but this is a voluntary acknowledgment that he has no cause of action.

**NON EST INVENTUS**, the sheriff's return to a writ, when the defendant is not to be found in his bailiwick.

**NONES, NONÆ**, of every month, is the 7th day of March, May, July, and October, and the 5th day of all the other months.

**NORROX, quasi NORTH ROX**; an abbreviation in heraldry for northern king-at-arms.

**NOTARY PUBLIC** is a person who attests deeds or writings, to make them authentic in another country) but whose chief busi-



ness is in noting and protesting bills of exchange. By 41 G. 3, c. 79, no person shall act as a public notary unless duly admitted; penalty £50. If any notary shall act, or permit his name to be used for the profit of any person, not entitled to act as a notary, he shall be struck off the roll, on application to the Court of Faculties.

**NUDUM PACTUM**, a bare agreement without earnest or consideration. Thus, if one buy a horse, or other thing, for money, and no money be paid, nor earnest given, nor day set for payment, nor the thing delivered; here no action lies for the money or thing sold, but the owner may sell it to another if he pleases; such *nuda pacta* being void in law, and of no effect.

## O.

**OATH.** An appeal to God, as a witness of the truth of what is affirmed or denied, in the presence of those who are authorized to administer the same; and, in taking it, the party, as a symbol of his belief in the existence of a Supreme Being, whom he attests, is required to lay his hands on and kiss the Holy Scriptures. Quakers, Moravians, and Separatists, are allowed, under 4 W. 4, c. 49, and c. 82, instead of an oath, to make their solemn affirmation in all cases of civil or criminal procedure. In the session of parliament of 1833, on the return of a Quaker to the house of commons, his affirmation was received in lieu of the customary oaths taken by members. In order to lessen the frequency of oaths and solemn affirmations, written declarations have been substituted in various transactions, in the customs, excise, and the public offices; such declarations, if untrue, subjecting the offender to penalties. By 5 & 6 W. 4, c. 62, the universities of Oxford and Cambridge, and other corporate bodies, may substitute a declaration in lieu of an oath. Churchwardens and sidesmen's oaths are abolished, and oaths and affidavits of persons acting in turnpike trusts. Declaration in writing sufficient to prove the execution of any will, codicil, deed, &c. In trials, by 17 & 18 V. c. 125, s. 20, the judges may allow witnesses who religiously object to be sworn, to make their solemn affirmation. The practice of magistrates receiving voluntary oaths relative to matters not the subject of judicial inquiry is prohibited; as those of quacks, to the efficacy of their nostrums, or of a brewer, that his beer is made only of malt and hops. Making a false declaration is a misdemeanor. It is only oaths administered in civil or criminal suits, in a court of justice, having power to administer an oath, or before some magistrate or officer invested, by statute, with similar authority, that the law takes criminal cognizance of. Where, too, an oath is required by act of parliament, but not in judicial process, the

breach of it Professor Christian considers not to amount to *perjury*; unless the statute enacts that such oath, when false, shall be perjury, or shall subject the offender to the penalties of perjury. The house of commons has no power to administer an oath, except in those particular instances in which that power is granted by express act of parliament.

**OBIT**, a funeral solemnity for the dead; commonly performed when the corpse lay in the church uninterred, 2 *Cro.* 51. The anniversary of a person's death is likewise called an *obit*.

**OBLATIONS** were anciently of several sorts; as those which the priest had for saying mass, those given by the last will and testament of the deceased, those paid at funerals, and those paid by penitent persons, called *oblaciones penitentium*.

**OBVENTIONS** are offerings or tithes. *Oblations, obventions, and offerings*, are generally the same thing. *Blount*.

**OFFERTORY** is a service in the church, which is read at the celebration of the holy communion, during the time the churchwardens are collecting the alms or offerings of the congregation for the use of the poor. Sometimes the money collected is itself called the offertory. *Whishaw*, 220.

**OLD JEWRY**, the place or street in London where the Jews formerly lived. *Cowel*.

**OLERON LAWS** are the laws of Richard I. relating to maritime affairs; so called because made in the island of Oleron, in the bay of Aquitaine.

**OLYMPIAD**, an account of time among the Greeks, consisting of four complete years, having its name from the Olympic games, which were kept in honour of Jupiter every fourth year, near the city of Olympia. The first Olympiad began 770 years before the birth of Jesus Christ.

**ONUS PROBANDI**, that is, the burthen of proving.

**ORDEAL**, like the corsned, a mode of purgation or trial existing in the dark ages, and of which there were two kinds, one by *fire*, the other by *water*, the former being confined to persons of rank, the latter to the common people. *Fire ordeal* was performed either by taking up a piece of red-hot iron, or by walking barefoot and blinded over nine red-hot ploughshares, laid at unequal distances; and if the accused escaped unhurt he was adjudged innocent. *Water ordeal* was performed either by plunging the bare arm into boiling water, or by throwing the suspected, tied hand and foot, into a river, and if he escaped scalding in the first case, or drowning in the second, he was acquitted of crime.

**ORDER**. A term applied to those summary awards which justices of peace, by various statutes, are empowered to make in a great variety of cases that come before them; such as in sudden and urgent distress to parish officers for the relief of

paupers, or to pawnbrokers refusing to deliver up pledges. It is less formal and precise than a *conviction*; if an order be substantially right it is sufficient; but, in a conviction, certainty to the greatest degree of technical precision is requisite. *Order* is also applied to any rule or regulation issued by the judges regulating judicial procedure; or to a draft, or cheque on a banker, for the payment of money to bearer on demand.

ORDINARY, a term in civil law for any judge or bishop, who has authority to take cognizance of causes in his own right, and not by deputation.

ORDINARY OF NEWGATE is one attendant in *ordinary* upon condemned malefactors in that prison, to prepare them for death, and he records the behaviour of such persons. *Cowel*.

ORIGINAL WRIT was an instrument formerly issued out of the Court of Chancery sealed with the great seal, and was the process used for the commencement of personal actions; but is now limited to actions of ejectment and replevin, the Uniformity of Process Act having substituted writs of *summons* and *capias*.

OSCULUM PACIS, the kiss of peace; it took place in the churches, after the priest had said *pax Domini vobiscum*, when the people kissed each other. *Cowel*.

OVERT ACT, an open act, capable of legal proof.

OUTLAWRY is a punishment inflicted for contempt, and formerly subjected the party to forfeiture and disabilities.

OXFORD UNIVERSITY. The constitution and government of this national foundation was sought to be reformed in 1854 by the 17 & 18 V. c. 81. The general purport of the act is stated to be to enlarge the powers of making statutes and regulations for the extension of the University, the abrogation of oaths, and for improving the discipline and studies of the several foundations. For carrying out these objects a commission has been appointed to continue in force till January 1, 1858, and empowered to demand the production of any document, account, or information relative to the University, its statutes, usages, or practice; and no oath taken by any officer to be pleadable in bar of its authority, ss. 1-4. By s. 5, the Hebdomadal Board is to cease, and all its powers be transferred to a Hebdomadal Council, to consist of the chancellor, vice-chancellor, the proctors, six heads of colleges or halls, six professors of the University, six members of Convocation of not less than five years' standing; such heads of colleges or halls, professors, and members of Convocation to be elected by the Congregation. Persons elected for more than one class, to declare under which class they will sit, s. 6. The three juniors of each class in academical standing, reckoning from matriculation, to vacate their seats at the expiration of the third year, and all the other persons elected at the expiration of the sixth year. Members eligible to be re-

elected. If any member of council reside for less than twenty-four weeks during term-time in any year, his seat to be declared vacant. Chancellor, or vice-chancellor, or his deputy, to be president of the council. The Congregation of the University is to be composed of the following twelve classes of persons:—the chancellor, high steward, the heads of colleges and halls, the canons of Christchurch, proctors, the members of the Hebdomadal Council, certain officers, namely, librarians, public orators, keepers of archives, &c., the professors, assistant or deputy professors, public examiners, all *residents*,\* and lastly, all persons made eligible by any statute of the University, approved by the commissioners. Chancellor or vice-chancellor to be president of the Congregation, ss. 14, 16. By s. 18, the statutes of the Hebdomadal Council are to be promulgated in the Congregation, and a member of the latter may move amendments, which the council may adopt, alter, or reject. Members of Congregation may speak in *English*. For one vacancy in the council they are to have one vote; two or three vacancies, two votes; four vacancies, three votes; five or six vacancies, four votes; but no elector is to give more than one vote for any one candidate. By s. 22, the powers of the Convocation are retained. University may provide that votes may be given by proxy at election of chancellor. University oaths, binding the juror not to disclose any matter or thing relative to his college, or not to concur in any change in its statutes, declared to be illegal oaths.

By s. 25, power granted to vice-chancellor to license any member of Convocation to open his residence, if situate within one mile and a half of Carfax, for the reception of students, who shall be matriculated and admitted to all the privileges of the University, without being members of any college or existing hall; such opened residence to be called a Private Hall. The University are empowered to make statutes before the first day of Michaelmas term, 1855, in order to carry into effect the objects purposed in relation to the private halls; and by the same date the various colleges and halls may amend statutes with respect to the eligibility to headships, fellowships, and other college emoluments, and the tenure thereof, to insure the same being conferred according to personal merits and fitness, subject to the approval of the Commissioners; and if any college omit to make such statute, the Commissioners are empowered to make such orders or regulations as they deem proper, such orders to be laid before the college and the visitor two calendar months before being submitted to her majesty in council, when, if two-thirds of the governing body shall, in writing and under seal, declare that in their opinion such ordinances will be pre-

\* Namely, all members of Convocation who have resided twenty weeks within one mile and a half of Carfax during the year expiring September 1 next preceding the promulgation of the Register of the Congregation.

judicial to the college as a place of education, the same shall not take effect ; but the Commissioners may submit other rules and regulations for the like purposes. All ordinances and regulations framed by the Commissioners, and objected to by the governing body of the college or school to which they relate, are to be transmitted to one of the Secretaries of State, and laid before parliament, s. 33. Winchester College is to be subject to the provisions of this act, s. 34. By s. 38, the Commissioners are to have regard to the wants and improvements of the college or hall, the advancement of religion and learning, the establishment of the professoriate on an enlarged basis, and the delivery of lectures where the college is able to make such provision. All statutes made by the University or colleges are subject to repeal or alteration by the proper authorities, as are also those made by the Commissioners. Persons becoming members of any college after the passing of this act not to be considered as possessing an existing interest within the meaning of the statute. After the first day of Michaelmas term 1854 no oath is to be taken or declaration made on matriculating, nor on taking the degree of B.A. The University Court, by s. 44, is henceforth to be subject to the rules of the common and not the civil law, and rules are to be made for its proceedings by three of the judges of the superior courts in conformity with those of the county courts. The act is amended by 19 & 20 V. c. 31, bringing *within its powers* parliamentary endowments, and declaring certain canonries of Protestants to be college endowments.

OYER AND TERMINER, from the French *ouir* and *terminer*, to hear and determine. It is the first and largest of the five commissions by which the judges of assize sit in their several circuits, and empowers them to hear and determine treasons, felonies, and trespasses. In case of any sudden insurrection, riot, or general outrage, which requires prompt investigation and punishment, a *special* commission of oyer and terminer to try particular persons and offences is granted.

(O) YES, from the French *oyez*, "hear ye," is the old proclamation to enjoin silence and attention in the court.

## P.

PAINS AND PENALTIES, *Bill of*, is an act of parliament to attain any one of treason, or felony, or to inflict pains and penalties beyond or contrary to the law then in force. Thus, the 9 G. 1, c. 16, inflicted pains and penalties on the Bishop of Rochester, Kelly, and others for being concerned in Layer's conspiracy, and they were condemned by parliament without such evidence as is required by the common law courts. Bills of pains and penalties are seldom resorted to ; they are an *ex post facto* law, made for a temporary emergency, and, properly considered, inconsis-

tent with the regular principles of justice. The last attempt to pass a bill of this kind was that of 1820, instituted against the queen of George IV.

**PALLIO COOPERIRE** is an ancient custom, mentioned by Cowel, when children were born out of wedlock, and their parents afterwards intermarried, that those children, together with the father and mother stood under a cloth extended while the marriage was solemnizing, which was in the nature of adoption. By this custom, the children were taken to be legitimate; but such children were never legitimate in this country at common law, though the clergy sought a law made to render them legitimate.

**PANDECTS**, the books of the civil law, compiled by Justinian in the sixth century, and wisely made to supersede and annul the old laws and text books previously in use in the Roman empire.

**PANEL**, a slip of paper, or parchment, containing the names of such jurors as the sheriff or other ministerial officer returns to serve on trials of issue in courts of law. The enrolment of the names upon the schedule is called *impanelling* a jury; the returning officer is also said to *array* the names on the panel. In Scotch criminal law, the accused, who is called a defender till his appearance to answer the charge, is afterwards styled the *panel*.

**PAPER DAYS** are certain days in each term; so called because the court hears on those days the demurrers, or issues at law, which have been entered in the paper book for argument before they enter upon motions.

**PARAPHERNALIA** are the goods which a wife claims above her dower or jointure, after her husband's death, as furniture for her chamber, wearing apparel, and jewels, which are not to be put into the inventory of her husband.

**PARENT** is either father or mother, but generally applied to the former.

**PARISH** is one of the many local divisions of England, the origin of which cannot be exactly traced. The number of parishes is about 11,000, and of very unequal extent. In the North parishes comprise an area of 30 or 40 square miles, which is seven or eight times the area of parishes in the South. The chief adjuncts of a parish are an incumbent, rector or vicar, constable, and overseer. There are 200 *extra-parochial* places, many of which are as large as parishes; these claim exemption from poor rate, because there is no overseer on whom the magistrate can serve an order; from militia, because no constable can make a return; from repaving highways, because no surveyors. See *Creation of New Parishes*, p. 82.

**PARISH CLERKS**. The general nature of these having been explained, p. 124, it only remains to notice the constitution of these

within the Bills of Mortality, who were originally incorporated in 1232, for the purpose of cultivating church music. They were also great performers of the mysteries, or scriptural dramas, so common during the papal times. At the Reformation they were dissolved, and their hall and altar demolished. In 1611 they were re-incorporated by James I. and several valuable privileges conferred on them. In return for these, the duty of making up the *Bills of Mortality* was imposed upon them, every clerk being bound to make a weekly report of christenings and burials which happen in the course of each week, accompanied with such information as he can collect, with respect to the ages, diseases, and other circumstances of persons dying. From these parochial returns, the clerk of the company makes up a general return, copies of which are sent to the different public authorities; for which purpose the company are authorised, by their own charter, to keep a printing-press and printer of their own.

**PARISHIONER** is an inhabitant of, or belonging to, any parish, lawfully settled therein; and those who rent lands and tenements within a parish, though not *actually inhabitant* or resident therein, are, for the purpose of all parochial charges and burthens, considered to be parishioners. Parishioners paying scot and lot are, of common right, entitled to be admitted into a general vestry, and to give their vote, *Raym.* 1388. So, also, *out-dwellers*, occupying land in the parish, have a right to vote in the vestry as well as the inhabitants, 4 *Burn's Eccl. Law*, 7. But, by 59 (4. 3, c. 85, s. 3, no person who on demand has refused or neglected to pay his poor rates, is eligible to vote in any vestry.

**PARISH REGISTER**, a book wherein baptisms, marriages, and burials are registered in each parish, every year. It was instituted in the 13 H. 8; it must be subscribed by the minister and churchwardens, and the names of the persons registered be transmitted yearly to the bishop; but registration is now regulated by 6 & 7 W. 4, c. 89 (p. 153). It has been decided, *Burn's Eccl. Law*, 6th edit. v. 3, p. 293, that parish registers are open to all persons for inspection, and making extracts, on proper cause being assigned, and that this inspection may be demanded, but that the rector or curate cannot be obliged to make copies of these books or a certificate.

**PARLIAMENT.** The general constitution of this branch of the supreme power has been explained (p. 4), and we shall here only notice the parliaments which acquired peculiar designations. 1. *Parliamentum insanum*, assembled at Oxford 41 H. 3, so styled from the madness of its proceedings, and because the lords attended with armed men, and contention grew high between king, lords, and commons, whereby many extraordinary things were done. 2. *Parliamentum indoctum*, or the unlearned parliament, a parliament of 6 H. 4, to which, by

special precept of the sheriffs in their several counties, no lawyer or other person skilled in the law was to come, therefore it was so termed, 1 *Bl. Com.* 176. 3. *Parliamentum diabolicum*, held at Coventry 38 H. 6, by which Edward, Earl of March, (afterwards king,) and many of the chief nobility, were attainted, but the acts passed were annulled by the succeeding parliament. There have also been the *long* parliament, which sat during the Commonwealth; the *convention* parliament, that established on the throne the Prince of Orange; and the *confiding* parliament, so called from its devotion to the will of the king's ministers.

**PAROL**, word of mouth. *Parol contracts* are all contracts not under seal.

**PARTY WALL**. A wall separating two buildings, as a protection against the communication of a fire from one to the other.

**PASSAGE**, money paid for the transit of persons or goods, or for the landing of them on shores or river-banks.

**PASSPORT**, a printed permission signed by a consul or minister of state, which allows a person to go abroad. When such passport has been obtained, it must be signed by the minister or agent of the State to which the traveller intends to proceed. Such a document states the name, age, and profession of the bearer, describes his person, and serves as a voucher of his character and nation, and entitles him to the protection of the authorities of the country through which he may travel. In time of war passports may afford some security to States and to individuals, but in periods of tranquillity they are often a vexatious obstruction to travellers. In the British Islands and the United States of America no passports are required.

**PAYMENT OF MONEY INTO COURT** to the proper officer, with the costs incurred, is an admission of the *right* of action. This may be done upon motion for leave to pay the money into court. If, after the money paid in, the plaintiff proceed in his suit, it is at his own peril: for, if he do not prove *more* due than is so paid into court, he may be nonsuited, and pay the defendant costs; but he may still have the money so paid in, for that the defendant has acknowledged to be his due. So if the defendant plead a set-off, he must pay the remaining balance into court.

**PECULIAR**, a parish or church that has a special jurisdiction within itself to grant administration or probate of wills, &c., exempt from the ordinary.

**PEERS** are persons of the same rank or degree. The right of every one to be tried by a jury of his peers, or equals, is considered the chief bulwark of the liberties of Englishmen. *Peers of the Realm*, or its equivalent, *peers of parliament*, are the hereditary counsellors of the crown. They are created by *writ*



or *patent*, and form the upper house of the imperial Legislature. A *Scotch peer*, though not one of those sitting in parliament, is privileged from arrest, as appears from the case of Lord Mordington, *Fortescue's Rep.* 165. This lord, who was a Scotch peer, but not one of those who sat in parliament, being arrested, moved the Court of Common Pleas to be discharged as being entitled, by the Act of Union, to all the privileges of a peer of Great Britain; and prayed an attachment against the bailiff; when a rule was made to show cause. Upon this, the bailiff made an affidavit, that, when he arrested the said lord, he was so mean in his apparel, as having a worn-out suit of clothes, and a dirty shirt on, and but sixteen pence in his pocket, he could not suppose him to be a peer of Great Britain, and therefore, through inadvertency, arrested him. The court discharged the lord, and made the bailiff ask pardon. The word *peer* was first applied to the lords of parliament in 1321, when a sentence of banishment was decreed against Hugh Le Despencer, these words being used, "therefore, we *peers* of the land do award," &c. In the modern acceptation of the term, every person is a peer who in his own right enjoys the title of duke, marquis, earl, viscount, or baron in England, Ireland, or Scotland. The whole body collectively is styled the *peerage*, the title each of them enjoys is styled his *peerage*, and the book which describes his pedigree is called a *peerage*. The members of the house of lords are all peers, (except the bishops,) but all peers are not lords of parliament or peers of the realm. There are 137 Scotch and Irish Peers, who only sit in the upper house by their representatives; sixteen representing the peerage of Scotland, and twenty-eight the peerage of Ireland. But all peers of England and all peers of the United Kingdom have seats and votes; but it seems doubtful from the decision of the house of lords in 1856, on the Wensleydale peerage, whether the crown can create a parliamentary peerage without hereditary succession. The English bishops, or spiritual lords, sit in virtue of the episcopal office to which usage or custom, or the feudal barony that William I. annexed to each bishopric, gives a right to a place in parliament; this barony became unalienable from the ecclesiastical office, but conferred no hereditary title. The bishops do not sit on the trial of peers, and are not eligible to be tried by the house of lords, but are amenable, like commoners, to the other judicial tribunals of the country.

PEINE FORTE ET DURE, the "strong and hard pain," is the punishment anciently inflicted on those who stood mute, or refused to plead when put upon trial. In this case the prisoner was conducted to a low dark chamber, laid on his back, naked, on the bare floor; as great a weight of iron as he could bear was next placed upon him, and in this situation he was fed with bread and water, till he died, or submitted to answer. It ap-

pears, by a record of 31 Edw. 3, that the prisoner might then possibly subsist forty days under this lingering punishment. By standing mute, and suffering accordingly, the judgment, and of course escheat of lands, was, by the ancient law, avoided. But by 7 & 8 G. 4, c. 28, if any person arraigned of any crime stand mute, or will not answer directly to the charge against him, the court may order a plea of "Not Guilty" to be entered, when the trial may proceed as if the accused had actually pleaded. Mr. Christian relates the story of a father, who, in a fit of jealousy, killed his wife and all his children who were at home, by throwing them from the battlements of his castle, and, proceeding towards a farm-house at some distance, with intent to destroy his only remaining child, an infant there at nurse, was intercepted by a storm of thunder and lightning. This awakened in his breast the compunctions of conscience; he desisted from his purpose, surrendered himself to justice, and, in order to secure his estate to his child, had the resolution to die under the *peine forte et dure*.

**PENAL STATUTES**, statutes imposing penalties on the commission of certain offences, and actions brought for the recovery of such penalties, are called *penal* or *popular actions*.

**PENANCE**. An ecclesiastical punishment, in which the penitent makes satisfaction to the Church for the scandal he has given by his evil example. In the case of incontinence or incest, the sinner is usually enjoined to do public penance in the parish church or market-place, bare-headed and bare-legged, in a white sheet, and to make an open confession of his crime, in a prescribed form of words. In smaller matters, satisfaction is to be made before the minister and churchwardens, or some of the parishioners, respect being had to the nature of the offence. *Penance* may be commuted for a sum of money to be applied to pious uses.

**PENITENTIARY HOUSES** were instituted by 19 G. 3, c. 7, and intended for the moral reform, as well as punishment of delinquents. In forming the plan of penitentiaries, the principal objects have been—by sobriety, cleanliness, and medical assistance; by a regular series of labour; by solitary confinement during the intervals of work; and by religious instruction, to preserve and amend the health of the offenders: to inure them to habits of industry, to guard them from pernicious company, to accustom them to reflection, and to teach them the principles and practice of moral and social duty. These were the original objects; but it was not till 1816 a national penitentiary was built, on a large scale, at Millbank, and the system has lately been much extended in other places, but still continues an experimental measure.

**PERAMBULATION OF PARISHES** is a going over and survey of the boundaries of parishes by the minister, churchwardens, and

parishioners, once a year, in or about Ascension Week. In this perambulation the parishioners may justify going over any man's land, according to usage, and, it is said, may abate all nuisances in their progress.

**PERMIT**, a licence granted to remove goods liable to the excise duties; and any person making paper in imitation of excise paper, or counterfeiting permits, or uttering the same, is guilty of felony. Before a permit is granted a *request note* must be delivered, containing the date, the name of the place from and to which the commodities are to be carried, the mode of conveyance, the name of the sender and of the person to whom sent, with any other particulars the commissioners from time to time may direct; and be signed by the person or his clerk requiring the permit. Fraudulently to procure a request note, or misuse a permit, penalty £500, besides forfeiture of commodities, packages, conveyance, &c. A *private* person not being an entered trader, having occasion to remove goods for which a permit is requisite, must make a declaration that the duties have been paid; and if it be intended to remove the goods to any other person than the person requiring the permit, a further declaration must be made that the goods have not been sold to such other person upon a request note delivered to the officer granting a permit for the removal. Making a false declaration, penalty £100. If any retailer or other person send out or receive any spirits exceeding ONE GALLON without permit; or if any carrier, boatman, or other person, assist in the removal thereof, every such person shall forfeit £200, together with spirits, casks, packages, cart, boat, or horses, used in the conveyance. Permits are not requisite for the removal of wine, nor are the stocks of dealers under the survey of the excise, unless they also deal in spirits.

**PERSONAL ACTIONS** are those whereby a man claims something due to himself, personally, or where he claims satisfaction, in damages, for some injury to his person or property.

**PETER-PENCE**, an obsolete claim of the church of Rome of a penny from each house.

**PETITION OF RIGHT**, a parliamentary declaration of the liberties of the people, presented to Charles I., in 1626. Until the rights set forth in this instrument were assented to, the Commons refused to vote the supplies. At first the king sent an evasive answer to the petition, which not being accepted, he pronounced the formal words of unqualified assent, "Let right be done as it is desired." 1 Car. c. 1.

**PETT SERJEANTY**. A mode of tenure which is defined by Lyttleton to consist in holding lands of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. The tenure by which the grants to the Duke of Marlborough and the Duke of

Wellington, for their military services, are held, is of this kind, each rendering a small flag or ensign annually, which is deposited in Windsor Castle.

**PEW IN THE PARISH CHURCH.** Dr. Phillimore, in giving judgment on a case arising out of a dispute about pews in a parish church, observed that both before and since the Reformation the use of the parish church had been by law free to the parishioners. Since the Reformation, fixed seats had been introduced in place of the movable ones which had been formerly in use; and these seats, with some peculiar exceptions, had been in the disposition of the ordinary, who exercised his authority through the churchwardens, they being his officers as well as those of the parish, and subject to the Consistorial Courts. These courts had long since decided the following points:—  
1. That there can be no property in seats, the sale and lease of them being strictly illegal. 2. That all private rights in seats must be held by a faculty, or a prescription, which supposed the previous grant of a faculty. 3. There was a possessory right, which was not good against the ordinary, but sufficient to enable the possessor to maintain a suit against a mere disturber. See further, p. 119.

**PIGEON HOUSE.** Formerly none but the lord of the manor, or the parson, might erect a pigeon house; and now it seems that this privilege can only be *lawfully* exercised by a freeholder, who may build a pigeon house on his own ground, *5 Rep.* 194.

**PILLORY**, a mode of punishment formerly common in England and most European countries, and intended to disgrace the offender by the public exposure of his person. The English pillory consisted of a wooden frame raised several feet from the ground, behind which the culprit stood, supported upon a platform, his head and arms being thrust through holes in the screen, so as to be exposed in front of it; and in this position he remained a definite time, sometimes fixed by the law, but usually assigned at the discretion of the judge who passed sentence. A more enlightened public sentiment has generally led to the abandonment of this unequal and revolting punishment; it was abolished in England in 1839, and the example has been followed in other countries.

**PIT**, in Scotland, was formerly a hole in which women thieves used to be drowned; and to be condemned to the *pit* was equivalent to our phrase of being condemned to the gallows. *Skene.*

**PIX**, a strong and antique box, containing specimens of the coins intended for examination by a *jury of the pix*, composed of twelve eminent goldsmiths, who are specially empanelled to make an assay, according to ancient usage, of the gold and silver moneys manufactured in the Mint within a specified period, and determine whether their actual weight and quality

correspond with the legal standard, for which the chief officers of the Mint are responsible. The jury is sworn in before a council appointed by the queen, consisting of the lord chancellor, president of the Board of Trade, wardens of the Goldsmith's Company, and others. The court is held at distant intervals, which are optional with the crown; it is generally held twice in seven years, but lately every two years.

**PLACARD**, in French, *placuart*, signifies a bill or paper posted up, a proclamation, and these are the usual applications of the term in English. In Holland it is an edict or proclamation, also a writing or passport. In 33 H. 8, c. 6, *placard* is used for a licence to shoot with a gun, or practice certain games.

**PLAINT**, the first process in an inferior court; or, in a superior court, is a matter of complaint against the defendant, and for which the plaintiff obtains the queen's writ. In the county courts it describes the parties, the sum claimed, and the cause or motive of the action.

**PLANTATIONS**, or **COLONIES**, are places where people are sent to reside; or to which a company of people voluntarily emigrate under the sanction of Government. They may be divided into two classes, one of which is governed by the crown, without the intervention of local legislative assemblies; the other has councils and legislative assemblies framed on the model of those of the parent State. Of the latter description are most of the islands in the West Indies. They have a governor named by the queen; courts of justice, from whose decision an appeal lies to England; and legislative assemblies, who, with the concurrence of the governor, make laws suited to their own emergencies. In settlements acquired by conquest, the laws and customs by which the people were governed before the conquest bind them until new laws are given; but in an uninhabited country, newly discovered by English subjects, the English laws are in immediate force there, 2 *Salk*, 411; *Mod.* 152. See *Colonies*.

**PLOUGH MONDAY** is the first Monday after the Epiphany, and received the appellation from its having been fixed upon by our forefathers, as the period when they returned to the duties of agriculture, after the festivities of Christmas.

**PLOUGH-BOTE**, a right of tenants to take wood to repair ploughs, harrows, and other implements of husbandry.

**PLOUGH-LAND** is as much land as can be reasonably cultivated in a year with one plough, and is the same as a hide of land.

**POCKET SHERIFFS**. When the queen appoints a person sheriff, who is not one of the three nominated by the Judges in the Exchequer, as she may do in the exercise of her prerogative, the person so appointed is called a *pocket sheriff*.

**POLICE** is the ministerial branch of administrative justice, and extends to the prevention of crimes, as the judicial applies to their punishment and legal adjudication. It is also occupied

in watching over public order and economy, by preventing breaches of the peace, by the removal of nuisances and obstructions, and taking cognizance of the observance of those local and general laws made for the health, comfort, and convenience of the community. For the regulations of the London Police, see p. 91.

**PONE**, a writ whereby a cause depending in the County, or other inferior court, is removed into the Common Pleas, and sometimes into the Queen's Bench, as when a replevin is sued by writ out of Chancery, &c. ; then, if the plaintiff or defendant will remove that plea out of the County Court into the Common Pleas, or Queen's Bench, it is done by *pone*.

**PONTAGE**, an ancient toll for passing over or under a bridge with merchandize.

**PORT-REEVE**, or **PORTGREVE**, a chief magistrate in some seaport towns, with authority similar to that of mayor. *Camden*.

**POSSE COMITATUS**, the whole power or people of the county, which the sheriff may summon to his aid for the maintenance of the public peace, and the pursuit and seizure of felons.

**POSTEA** is the return of the judge before whom a cause has been tried, of what was done in the cause after joining issue and awarding the trial, and is endorsed on the back of the *nisi prius* record.

**POST FINE** is a duty to the queen, for a fine acknowledged in her court, paid by the cognizee after the fine is fully passed ; and it is so much, and half so much, as was paid for the *proefine* ; or the fine which, on suing out the writ of covenant on levying fines, is paid for before the fine is passed.

**POST OBIT BOND**, is a bond in which the main condition is, that it only becomes payable after the death of some person whose name is therein specified. *Whishaw*.

**POST OFFICE**. The General Post Office of the United Kingdom is managed by a postmaster-general, assisted by a secretary, and having under him many other officers of his own appointing, sworn to the faithful discharge of their duties. It was established nearly upon the present model, by the Commonwealth, in 1649, with the design not only of facilitating mercantile communications, but of detecting any traitorous designs against the Protector. The policy of having the correspondence of the empire under the inspection of Government is still continued ; for, by a warrant from the Secretary of State, letters may be detained and opened ; but severe penalties are imposed if any person wilfully detain or open a letter without such authority. Postmaster-general may establish any cross-roads, and may continue by-bags, and carry between towns and places not post towns. He is not a common carrier for hire ; therefore he is not liable for constructive negligence, and no action can be maintained against him for the loss of bank-notes, bills, or other

articles sent by post. By 1 V. c. 33, s. 12, no person employed by the post-office is compellable to serve as mayor, sheriff, or in any ecclesiastical, corporate, parochial, or other public office or employment, or on any jury or inquest, or in the militia.

By 2 & 3 V. c. 52, a uniform rate of postage, commencing with a penny and increasing with the weight, is established; the parliamentary privilege of franking being abolished, and official franking strictly regulated. The charge for inland letters, not exceeding  $\frac{1}{2}$  oz. in weight is one postage; 1 oz. two postages; 2 oz. four postages; 3 oz. six postages, and so on, adding two postages for every ounce up to 16 ounces, beyond which no packet will be received except parliamentary papers, petitions, and packets to and from the public offices. The price of a postage is one penny, which must be prepaid or it will be charged double, and if the weight of the letter exceed the value of the stamp it will be charged double. Letters exceeding 4 oz. in weight must be prepaid in money or stamps; under this restriction any weight may be sent by post, but the packet must not exceed two feet in length, width, or depth, and nothing should be posted that will not bear the crush in the letter bags. In the *metropolis* all letters or packets for places within the United Kingdom, posted at any branch post-office or receiving office, or within the limits of the London district post, must either be prepaid by stamps or be sent unpaid. *Money prepayment* for inland letters is no longer permitted at the metropolitan offices. Letters or packets for places within the United Kingdom, posted at the Chief Office, St. Martin's-le-Grand, may be prepaid by money up to five, p.m., after which hour they must be either prepaid by stamps or be sent unpaid. These regulations do not extend to letters for places abroad, which may still be prepaid by money or stamps, at the option of the sender. Petitions and addresses forwarded direct to the Queen are exempt from postage; and also petitions to Parliament are exempt, if sent to a member of either house, without covers, or are in covers open at the sides. The rate of postage for parliamentary papers is 1*d.* for over 4 oz. Books without any writing, works of literature and art, may be sent by post, if prepaid by stamps, open at the ends, at the rate for every packet not above 4 oz. 1*d.*; 2*d.* not above 8 oz., and 2*d.* additional for every additional half pound. Single books may be sent to British America, West Indies, Hong Kong, Ceylon, Gibraltar, Malta, the Ionian Islands, and Heligoland; if under  $\frac{1}{2}$  lb., 6*d.*; above 1*s.*, prepaid by stamps. Books may be posted to any part of Hindostan at a total charge of 6*d.*, if not above  $\frac{1}{2}$  lb. in weight.

*Newspapers* to go the same day must be posted at the General Post Office before six o'clock, or at a branch office before half-past five, or at a receiving house before five o'clock. To pass free they must be *stamped*, posted in covers open at the sides,

and contain no words, or communication printed after the publication of the paper; nor any writing other than the name and address of the person to whom sent: but by affixing conspicuously on the cover a penny stamp a newspaper may be written in, if not intended to go abroad. Stamped newspapers can be circulated in the United Kingdom free of postage at any time within fifteen days as often as is desired. In the metropolis a newspaper, if addressed to any place within *three miles* of the General Post Office, is charged 1*d.* on delivery. Newspapers sent to Australia must have a penny stamp. *British newspapers* sent to foreign countries (where they are permitted to go free through the foreign post) go free: but if otherwise, they are charged a British postage of 2*d.* each; or a rate equivalent to the foreign postage. French newspapers are subject to a postage in England of one halfpenny. English papers pay in France a postage of 5 centimes. Newspapers to and from the colonies are transmitted free, unless sent by private ships; but must be posted within a week of their publication. All colonial as well as foreign newspapers when *re-posted* in this country to a new address, are chargeable with letter postage according to weight.

By 10 & 11 V. c. 85, *printed receipts* may be given for the postage at the expense of the person requiring the same. Letters sent contrary to post-office regulations may be detained. Commissioner under a fiat of bankruptcy may order, for a period not exceeding three months, any letter addressed to the bankrupt to be re-directed to the official assignee or other person. The sender of an unstamped letter may be compelled to pay the postage of a rejected letter, with the additional postage for re-delivery; or the receiver of a letter, after the payment of the postage, may, if desirous to reject the letter, on application to the Post Office, recover the postage, and such postage and re-postage be charged to the sender of the same. But a person to whom a letter is addressed is not free to open and read it; the opening of a letter is the act of ownership, and if the person to whom it is directed open it he is liable for postage. In proceedings for postage the apparent writer to be deemed the sender of a letter.

*Money Order*—sums under £5 are granted in every post town upon every other post town in the United Kingdom, on application at the various offices, and also by and upon certain offices in the metropolis, of which the postmaster is furnished with a list, for which a commission of 3*d.* for £2, and 6*d.* for any sum above £2 and not exceeding £5, is charged. They must be presented for payment within the second calendar month after obtained, or a fresh order will be charged for; or within the twelfth calendar month, or they will not be paid at all.

*Wrongfully opening or delaying a post letter is a misde-*



meanor, except in certain specified cases. Officer to steal, embezzle, or secrete a letter, subjects him to transportation for seven years, or imprisonment for three years, and if such letter contain any chattel or money, transportation for life. It is transportation for life in any person to steal a post letter or bag; or any money or valuable therefrom, or to stop the mail, with intent to rob and search the same. Receiver of stolen letter or bag subject to transportation for life. To steal, destroy, or delay any printed votes, or proceedings in parliament, or any printed newspaper, or any printed paper sent by the post without cover, or in covers open at the sides, subjects to fine and imprisonment. Persons endeavouring to procure the commission of any post-office felony or misdemeanor, subject to two years' imprisonment.

By 1 W. c. 36, s. 2, any person illegally conveying a letter incurs a penalty of £5 for every offence, and £100 for every week the practice is continued. The sender also incurs a penalty of £5 for every offence, with full costs of suit. The penalties extend to letters only; the transmission of books, newspapers, or money may be by any mode the sender pleases.

POSTING, travelling along the public road with hired horses, with or without hired carriages, and which in most European countries, except Britain, is a monopoly in the hands of Government. Posting, however, has been almost superseded by stage coaches and railways.

POT-WALLER, a person who provides his own diet, which, in some boroughs, gave the right of voting for members of parliament.

POUND signifies an enclosure, where a distress is placed for safe custody, and may be either *overt* or *covert*. If a live distress of animals be impounded in a common pound *overt*, the owner, and not the distrainer, is bound to provide the beast with food, and necessaries; but if they be put in a pound *covert*, as a stable or the like, the distrainer must feed and sustain them. A distress of household goods or other dead chattels, which are liable to be stolen, or damaged by the weather, must be placed in a pound *covert*, else the distrainer must answer for the consequences. For POUND BREACH, *see* p. 479.

POURSUIVANT, a term for a king's messenger.

POWER, a term for the authority which one gives to another, vesting in him the disposition of property as to leases, portions, jointure, or sale or exchange. A power may either be given or reserved, and the person possessing it is called the donee. Estates created by it, and estates created by conveyances, are, after their creation, the same. The doctrine of powers comprehends the most technical and abstruse part of the law of property.

POYNINGS LAW, or the statute of Drogheda, passed in 1495, has had a marked influence on the subsequent legislative and

constitutional history of Ireland. By this law it was enacted that all the acts then or lately passed in England concerning its common weal should be law in Ireland. It was further provided that no parliament should be held in Ireland, until the lord-lieutenant had certified the English crown of the causes for holding it, and licence for the same had been obtained from the king. This badge of dependence on England has been thought to have operated beneficially by preventing the passing of many exterminating acts, which in times of anarchy the Irish ministry and their partisans in parliament would have readily resorted to. Poyning's Law was repealed in 1783, and the Irish parliament emancipated.

**PRÆMUNIRE**, *the penalties of*, are applied to a number of old offences tending to promote the papal power in diminution of that of the crown, and subject the offender to forfeiture and confinement during the queen's pleasure. Many statutes subjecting to præmunire are repealed, and prosecutions upon it are unheard of in our courts. There is only one instance of such a prosecution in the State Trials, in which case the punishment of præmunire was inflicted upon some persons for refusing to take the oath of allegiance in the reign of Charles II.

**PREMIUM PUDICITIÆ**, a consideration given to a previously virtuous woman by the person who has seduced her; and equity will enforce the payment of a bond given to a woman whom the obligor has seduced, 2 *Peere Wms.* 432. So, where provision has been made for a female by an ineffectual conveyance, equity will interpose in her behalf, both against the grantor himself and his representative. But the courts distinguish between those obligations for consideration *past*, and consideration in *future*; for, though a bond for *past* cohabitation is good, one to live in a *future* state of concubinage is void. A regard is also had to the previous character of a female. If a man has given a bond to his mistress, a common prostitute, and afterwards file a bill to be relieved against the same, it appears, from the case of *Whaley v. Norton*, that if the bill charge such to have been her course of life, equity will relieve against it. So, where a woman of good character went to live with the defendant, as a companion to his sister, knowing him to be *married*, and he having seduced her, and separated from his wife on the occasion, gave her a bond, as *præmium pudicitiae*, on a bill filed to enforce the payment thereof the same was dismissed, as arising *ex turpi causa*, 2 *Ves.* 160. But this doctrine seems to have been lately infringed in *Nye v. Moseley*, in which it was determined that an action at law may be maintained upon a bond given by a married man to a woman with whom he had cohabited for six years, and who knew that he was married, but who until that time had conducted herself with propriety, 6 *B. & C.* 113, *M. T.* 1826.

**PREBEND**, land or pecuniary endowment to a cathedral or conventual church in *præbendum*; that is, for the maintenance of a secular priest or regular canon, who is a *prebendary*, as supported by a prebend, *Dyer*, 221.

**PREEMPTION**, or purveyance, the right of first buying; formerly the king's purveyor exercised the privilege of first *buying*, or rather of levying on his own terms provisions, cattle, and carriages for the royal use. Abolished by 12 Car. 2, c. 24.

**PREROGATIVES**, apply to those privileges or rights of the crown which the queen exercises in virtue of the regal office.

**PRESCRIPTION** is the legal right or title to anything which is acquired by time or immemorial usage. For a prescriptive title to be valid it must have existed beyond the memory of man, or so long "that," as Lyttleton says, "no living witness has heard any proof, or had any knowledge to the contrary;" and as Lord Coke adds, "that there is no proof by record or writing, or otherwise to the contrary." See *Custom*.

**PRESENTMENT** is properly the notice taken by a grand jury of any offence from their own knowledge, without any bill of indictment laid before them; as the presentment of a nuisance, or a libel, upon which the officer of the court must afterwards frame an indictment, when the party presented can be put upon his trial.

**PRESERVES** for the encouragement of game have no privileges beyond those of other private grounds, the occupiers of which may generally prohibit persons from sporting therein, unless privileged by right of chase or free-warren. If any person enter on another's ground he is a trespasser, and if he enter by force he may be opposed by force, *Chitty, Game Laws*, 29.

**PRESIDENT OF THE COUNCIL** is the fourth great officer of state, and as ancient as the reign of King John; his office is to attend on the queen, to propose business at the council-table, and report to her majesty the transactions there.

**PREST**, is used for a duty in money to be paid by the sheriff into the Exchequer, or remaining in his hands. *Prest-money*, from the French *prest*, promptly, implying that those who have received it shall be forthcoming when wanted.

**PRICE-CURRENT**, a list showing the market price of commodities.

**PRIMAGE**, a duty at the water-side paid to the master and mariners of a ship; to the master for the use of his cables and ropes, to discharge the goods of the merchant, and to the mariners for loading or unloading in any port or haven; it is usually about 12*d.* per ton, or 6*d.* per pack or bale, according to custom.

**PRIMATE OF ALL ENGLAND**. The Archbishop of York is styled in formal documents Primate of England. and the Archbishop of Canterbury Primate of *all* England. The distinction arose

from a fierce dispute in respect of precedence, which occurred at a synod held at Westminster in the reign of Henry II., when the Pope's legate was present. From high words blows are said to have ensued between the rival metropolitans. Next day the Archbishop of York appealed to the Pope, and the dispute was settled by the respective titles mentioned being given to him and his brother metropolitan, the precedence being given to the See of Canterbury.

**PRIMOGENITURE**, the title to the succession or inheritance of a landed estate or dignity, in right of being the eldest male. If a man die seised of real estate, of which he had the absolute ownership, without having made any disposition of it by his last will, the whole descends to the heir-at-law, or customary heir; and the heir-at-law is such in virtue of being the eldest male person of those who are in the same degree of kindred to the person dying intestate. If land is entailed on a man and his eldest male issue, the eldest son takes the land by two titles, first as being a male, and next as being the eldest son. The right of primogeniture does not apply to personal property, nor when the interest in land is a chattel interest for a term of years, whatever may be its duration; nor does it apply when real estate descends to daughters as coparceners. See **INTESTACY**, p. 308, and *Executory Devise and Entail*, in the **DICTIONARY**.

**PRISAGE**, or butlerage, as anciently paid to the king's butler, was a duty of so much per ton levied, first in kind and then in money, on the importation of wine.

**PRIVATEER**, a ship of war fitted out at the expense of a private individual, with the permission of a belligerent State to cruise against its enemy. See *Marque*.

**PRIVILEGE**, a preference or precedence, or exemption from the general rules of law. It is of two kinds; *real*, attaching to any place, or *personal*, attaching to persons—as ambassadors, members of parliament, clergymen, and lawyers. Formerly religious houses and certain localities conferred the privilege of freedom from arrest, even in criminal matters, upon those who entered them; and in recent times many places existed which privileged those within them from arrest in civil suits. The latest existing and most notorious of these were the Savoy, the Mint, and Whitefriars. But by 8 & 9 W. 3, c. 39, the privileges of all these places were abolished. At present no arrest can be made in the royal presence, nor within the verge of the palace of Westminster; nor at any place where the sovereign resides, or the judges are judicially sitting. Personal exemption from arrest is guaranteed to all suitors, counsel, or other persons attending any court of record upon business; or to an arbitrator under a rule of *nisi prius*.

**PRIZE IN WAR**, the property taken from an enemy, the law of which is partly regulated by the law of nations. Questions of

naval prize-money in England are adjudicated by the Courts of Admiralty. Army prize is regulated by 2 & 3 W. 4, c. 53, which enacts that all captures shall be disposed of as the crown shall direct. Deserters entitled to prize-money not to receive the same; but such shares, and those unclaimed within six years after being paid to the Treasurer of Chelsea Hospital, to be forfeited, unless upon good cause shown and allowed by the commissioners of the hospital. Appraisements and sales to be made by agents appointed by the commanders and the other commissioned officers. Penalty on any other person sharing, and on agents permitting others to share, in the commission or emolument, in respect of agency, £100; and double the amount of agency allowed to be taken. A certified list of the persons entitled to share in captures to be transmitted to Chelsea Hospital by the commanding officer. Penalty for altering names, £500. Agents to collect and convert into money the proceeds of prize and capture, and within one month remit the same, together with account of sales. Agents or other persons wilfully delaying the payment to Chelsea Hospital shall pay interest, after the rate of £1 per cent. per month, to be shared amongst the captors, and to forfeit to Chelsea Hospital £500. Agency percentage not to exceed  $1\frac{1}{2}$  per cent., exclusive of brokerage and all other charges. The treasurer, at the end of three months from receipt of prize-money, to give notification in the *London Gazette*, and in two London morning newspapers, of distribution at the end of one month, and to notify the amount of a share of an individual in each class, and to continue to publish such notifications twice a week. Shares of prize-money due to non-commissioned officers or soldiers, to be paid, upon their personal application, or to wife or child, father or mother, brother or sister, or to the regimental agent of the regiment, or to any other regimental agent, as directed in a schedule. No fee to be taken on paying any share, under penalty of £100. Persons employed by the hospital, acting as prize-agents, to forfeit £500. In all joint expeditions by army and navy, immediately after adjudication by any Admiralty Court, the share of the army to be paid over to the hospital. Personations or forgeries wrongfully to obtain prize, punishable by transportation for life, or not less than seven years.

**PROBATE** is the exhibiting and proving of a will or codicil before an ecclesiastical judge.

**PROCESS**, the legal steps, by writs or otherwise, by which the defendant is made to answer; and, if found liable, to satisfy the claim made upon him by the plaintiff. *Practice* is the means by which the process is rendered available; settles the mode of bringing it to the knowledge of the defendant, the steps he must take to defend himself, the course of proceeding, and the regulations which require all these steps to be taken in a fixed time.

PROCHAIN AMY is the next friend suing for an infant.

PROHIBITION, a writ to prohibit an inferior court, and the parties to suit from further procedure in a cause. It may issue from any of the three superior courts of common law at Westminster; and differs from an injunction in equity, because the latter is addressed to the parties, and does not interfere with the court. A prohibition writ is grantable in cases where a court entertains a question without its jurisdiction, or where, though the question is within its jurisdiction, it attempts to act by rules contrary to the law of England.

PROCTOR, in the civil and ecclesiastical courts, is the same as attorney in the courts of common law.

PROCLAMATIONS are either royal or municipal; the latter are issued by the lord mayor of London, and the heads of some other city corporations, but always founded upon charter or custom. Authority to issue a royal proclamation forms one of the prerogatives of the crown, and is exercised to give currency to the coin of the realm, to enforce abstinence from vice and immorality, to direct the observance of a fast or thanksgiving day; or publicly to announce a declaration of war against a foreign power, or the imposition of an embargo on its shipping; or a proclamation may be issued to notify the enforcement of the law, or act of parliament; or that urgent circumstances have rendered it necessary to suspend its operation. Royal proclamations cannot create any new offence, and, according to Sir E. Coke (3 *Inst.* 162), have "only a binding force when grounded upon and enforce the laws of the realm."

PROPERTY TAX, see *Income Tax*.

PRO RATA is used when parties are called upon to pay *pro rata*; that is, in proportion to their respective interests.

PROTHONOTARY, a chief officer or clerk, whose duties were similar to the present masters in the queen's courts.

PROTOCOL, the first copy; the entry of an instrument in the book of a notary or other public officer, so that if the original be lost the copy may be admitted as evidence. It is also applied to a summary statement of diplomatic proceedings.

PROVINCIAL CONSTITUTIONS were decrees made in the provincial synods held under divers archbishops of Canterbury, from Stephen Langton, in Henry III. to Henry Chichele, in Henry V.; which last were adopted by the province of York in Henry VI.

PROVOST denotes the chief or head, and is equivalent to *prevôt* in French, and *præpositus* in Latin. In Scotland the provost is the chief municipal officer, as the mayor is in the cities and boroughs of England. It is also applied to the heads of Eton College and King's College, Cambridge. In the English navy the *Provost-Marshal* has charge of the prisoners taken at sea, and sometimes on land. Attached to the army, his duties are to see to the maintenance of military discipline, to seize and

secure deserters and other criminals, to preside over and enforce their punishment, and to check marauding.

**PUISNE** signifies younger, junior, or last created. So the several judges and barons, not chiefs, are called *puisne* judges or *puisne* barons.

**PUR AUTER VIE** is where lands are held for the life of another.

**PURLIEU**, derived from the French *pur*, clear, exempt, and *lieu*, a place; that is, a place clear from the forest, and signifies those grounds which were added to ancient forests over other men's lands, but were disafforested by the *Charta de Foresta*.

**PURVEYANCE**, an ancient but obsolete prerogative of the kings of England of purchasing or taking provisions from their lieges, and employing horses and carriages without leave of the owners. The parties whose property was thus seized were entitled to recompense, but had only Hobson's choice, to take what was offered or nothing. The persons employed in these compulsory levies were called purveyors, or "jackals of the royal table," as termed by Mr. Burke.

**PURVIEW**, is the body or enacting part of a statute, beginning with, "Be it enacted," &c., and contradistinguished from the *preamble*, which is the commencing part, setting forth the objects of an act of parliament.

**PUTATIVE**, the reputed or commonly esteemed, in opposition to the notorious or unquestionable.

## Q.

**QUADRAGESIMA**, applied to the first Sunday in Lent, and about forty days before Easter; so called from the forty days' fast of Jesus Christ.

**QUAKERS** are admissible to serve on juries, to public and municipal employments, to the office of sheriff or the degree of a barrister, or to be members of parliament; and are enabled, as well as Moravians and Separatists, to make affirmation or declaration in lieu of an oath, in all cases where oaths are requisite.

**QUAMDIU SE BENE GESSERIT**, a clause often inserted in the grant of offices, signifying that the party shall hold the same so long as he conducts himself properly.

**QUANTUM MERUIT**, so much as he has deserved.

**QUANTUM VALEBAT**, so much as it is worth.

**QUARANTINE**, the forty days which the widow of a deceased landowner may claim to remain in the chief house till her dower be assigned her. Also the sanitary precaution adopted in respect of vessels arriving from foreign places suffering from infectious diseases.

**QUASH**. To annul or render void. The Court of Queen's

Bench may quash an indictment for informality, or an order of sessions or coroner's inquest for irregularity.

**QUEEN'S PRISON.** Under 5 V. c. 22, this has been made the only prison for debtors, bankrupts, or other persons who, before the act, were confined in the prisons of the Queen's Bench, the Fleet, and the Marshalsea, and placed under the control of the home secretary, who may frame rules for its regulation. The property in the discontinued prisons of the Fleet and Marshalsea, is vested in the crown. All fees heretofore payable by prisoners are abolished; also the liberty of the rules and day-rules. Male and female prisoners are to be separately confined, and the prisoners of each sex to be classified. No prisoner to be allowed to have any beer, ale, victuals, or other food, or have any bedding, linen, or other things, except such as shall be allowed under the rules. Inquests are to be held in the prison by the coroner of the city of London. The clerk of the papers is empowered to take affidavits required of prisoners for any court of law or equity, for which he is to have a fee of 1s. The amount of salary to the officers is to be regulated by the Treasury, but that of the keeper is not to exceed £800 per annum, nor that of the clerk of the papers £400, nor those of the surgeon and chaplain more than £150 each.

**QUID PRO QUO**, giving one thing for another, being the mutual consideration in contracts.

**QUI TAM** is where an information is exhibited, or action prosecuted on a penal statute, for the sake of the penalty. Generally no action or proceeding for the recovery of a penalty or forfeiture under the Stamp Laws, can be instituted against any person, unless the same be commenced and prosecuted in the name of the attorney-general in England, or lord advocate in Scotland, or in the name of the solicitor or other officer of the stamp duties. There are exceptions to this, under particular statutes, as in certain prosecutions for penalties incurred under the acts for regulating stage-coaches and the post-horse duties. Proceedings for the recovery of penalties, under the laws relating to the customs and excise, are instituted and conducted by the proper officers, under the direction and control of the commissioners, who supply their own forms of information, summonses, convictions, and warrants, for which they are of course responsible, and will not permit an information to be laid, or a conviction to be drawn out, except in their own forms. In a *qui tam* action part of the penalty usually goes to the crown and part to the informer. In 1813 a multiplicity of actions having been brought against the clergy for non-residence, parliament interfered to stop them by passing a Bill of Indemnity. A similar anomalous interference occurred in 1844, when the Legislature interfered to stop certain *qui tam* actions against gamblers.



**QUIT RENT** is a small rent, payable by the tenants of manors, in token of subjection, and by which the tenant goes quiet and free. In ancient records it is called *white-rent*, because paid in silver money, to distinguish it from corn rent, &c.

**QUOD HOC**, a term used in law pleading, signifying *as to this*.

**QUORUM**. Justices or commissioners of the *quorum* are those whose presence is necessary in order that the rest may proceed. They are usually of greater experience or estate than the others.

**QUO WARRANTO**, an ancient writ directed against a person or corporation who usurp any office, franchise, or liberty, to enquire by what authority they support their claim. The modern information tends to the same purpose as the writ of *quo warranto*, and is regulated by the 9 Anne, c. 20; 60 G. 3; & 1 G. 4, c. 4.

## R.

**RABBIT WARREN**. The lord of a waste, over which there is a right of common, may make rabbit burrows thereon, and the commoner cannot kill the rabbits, though they become so numerous as to prejudice his right of common, but he may bring an action against the lord for surcharging. *Chitty, Game Laws*, 27.

**RACK or QUESTION**. An instrument formerly used for extorting confession from accused or suspected persons. Torture was generally abolished on the Continent prior to the French Revolution. There is no instance of the use of torture in England later than 1619; in that year a warrant was issued by the privy council, signed among others by Lord Chancellor Bacon, to put Samuel Peacock, who was suspected of treason, to the rack. The practice of torture continued in Scotland till 1688, and was only made illegal by the Act of Union.—*Waile's British History*, 535.

**RACK-RENT**, the full annual value of the land.

**RAGMAN'S ROLL**. So called from one Ragimund, a legate in Scotland, who calling before him all the beneficed clergymen of that kingdom, compelled them on oath to give in the true value of their benefices; according to which they were afterwards taxed by the court of Rome.

**RANGER**, a sworn officer of the forest, created by the queen's letters patent. His duties are to walk daily through his charge, to prevent trespasses, and to preserve, within the boundaries of the forest, beasts of chase and venery.

**RANSOM BILL** is the security which the master of a captured vessel gives to the captor, for the ransom of her; but by 22 G. 3, all contracts for that purpose are rendered illegal; and such bills absolutely void.

**RAPE**, a district of a county, equal to one or more hundreds.

**REALTY**, an abbreviation for the real estate, as *personalty* is

for the personal estate. *Real actions* are such as concern any claim to land, tenement, rents, commons, or other hereditaments.

REASSURANCE is a contract which an insurer, who wishes to be indemnified against the risk he has taken upon himself, makes with another person, by giving to him a premium to *reassure* to him the same event which he himself has insured.

REBUTTER is the answer of the defendant to the plaintiff's *sur-rejoinder*; and the plaintiff's answer to the rebutter is called a *sur-rebutter*; but it is very rarely that parties go so far in pleading.

RECORD, a memorial, or authentic testimony, in writing, generally inscribed in rolls of parchment, and preserved in courts of record. The rolls average, from nine to fourteen inches wide. The material on which records are written is clear and well prepared until the reign of Elizabeth. From that period to the present the parchment gradually deteriorates, and the worst specimens are furnished in the reigns of George IV. and William IV. The earliest record written on paper is said to be of the time of Edward II. Records form the highest *written* evidence of a judicial fact, and do not permit of any proof or averment to the contrary. There are also records of the acts of the Legislature and the executive Government. The public records are valuable as the evidence of prescriptive and other legal rights, and also as the elucidatory materials of history. Attempts have been made by a series of commissions, issued since 1800, at an expense amounting to nearly one million, to digest, arrange, and methodise these public documents, scattered in their various inconvenient depositories in the Tower, Chapter-House, Augmentation Office, First Fruits, Somerset-House, and other places. By 1 & 2 V. c. 49, the master of the rolls is made guardian of the public records, with power to appoint a deputy, and in conjunction with the Treasury to do all that may be deemed necessary for the custody and control of the national documents.

RECORDER, a person associated, by the queen's grant, with the mayor and other magistrates of any city, or town corporate, having jurisdiction and a court of record, for their better direction in legal proceedings; he is generally a barrister, or other person versed in the law. In the Municipal Corporations under 5 & 6 W. 4, c. 76, the recorder must be a justice of the borough, but not a member of parliament, alderman, or police magistrate.

RECOVERIES and FINES. These were proceedings in the courts of law, by which persons were enabled to bar estates tail, and, with the concurrence of their wives, to bar them of dower, and to exclude remainders. The proceedings in these cases were artificial, fictitious, dilatory, and expensive; calling for the interference of the Legislature. Therefore, the 3 & 4 W. 4, c. 74,

abolishes fines and feigned recoveries; enables tenants in tail to make an effectual alienation by any deed to be enrolled in Chancery, creates a protector to the estate by requiring that the owner of a beneficial and prior estate for life shall first give his concurrence; provides also new methods for barring estates tail, and expectant interests, and enables married women to dispose of their lands and money, subject to be invested in lands, with the concurrence of their husbands. *Tomlins.*

**RECTOR** is the chief of a parish, in whom is vested the right to tithes and ecclesiastical dues; it is often used in place of *parson*, though the latter, according to Blackstone, is the more honourable and legal title.

**RECUSANT.** Used in the statutes for one who separates from the church, as established by law.

**RED BOOK**, of the *Exchequer*, is an ancient record in which are registered those who held lands *per baronium* in the time of Henry II.

**REGALIA**, says Spelman, are the royal rights of a king. "*Regality* in Scotland was a grant of land with territorial jurisdiction, and the persons receiving it were termed *lords of regality*."

**REGENCY**, a temporary authority, which, without being the sovereign, exercises the functions of royalty. Cases of regency mostly arise from the crown by hereditary succession devolving on a minor, from mental incapacity of the king, or absence from the realm. By 3 & 4 V. c. 52, if, at the demise of Queen Victoria, her lineal successor be under the age of eighteen, her majesty's consort, Prince Albert, is appointed guardian and regent of the United Kingdom; and such successor, while under age, may not marry without the consent of the regent and the two houses of parliament. Such marriage would be void, and persons assisting thereto would be guilty of high treason: or, the regent marrying a catholic, he would thereby be disqualified for the guardianship and regency.

**REGISTRARS**, officers in the Court of Chancery, the Rolls, and vice-chancellor's court; they are experienced barristers, who enter decrees and orders, and perform the other duties, the burden of which, in the courts of common law, mostly fall on the chief clerk. There are, also, registrars of marriages, births, and deaths, the duties of which have been stated, p. 153.

**REGISTRY**, of deeds, conveyances, wills, and other instruments. It is intended to protect the interest of individuals, and to give notice to purchasers of incumbrances, that they may not be defrauded. But there is no general registry of deeds in England, such not being congenial to the habits or monied entanglements of the landed proprietors, or the interests of their legal advisers. As a limited protection, statutes have been passed requiring abstracts of deeds, conveyances, and judgments affecting lands in Middlesex and Yorkshire, to be registered, upon

penalty of being void against subsequent purchasers, if not enrolled. These statutes do not extend to copyhold property, nor to leases not exceeding 21 years, where the actual possession accompanies the lease. Bargains and sales of land, deeds regulating companies, deeds acknowledged by married women, or appointing protectors of entails, or annuity deeds, may be enrolled in Chancery or any other court; but these registries, being partial and compulsory, do not generally assist those who seek a full knowledge of incumbrances on property. In Scotland by the Act 1617, c. 16, a system of registration of documents on a right principle was established, intimately connected with the titles of real and heritable property and the due execution of the law. By 8 & 9 V. c. 35, the documents required to be registered have been much simplified and abbreviated.

**REGISTRY OF SHIPS.** No ship is entitled to the privileges of a British ship, unless registered by the collector and comptroller of the customs. Ships exercising the privileges of registered vessels before registry, to be forfeited. The name of the vessel which has been registered is not afterwards to be changed. Name to be painted on the stern in white or yellow letters, four inches long, upon a black ground, under a penalty of £100. See p. 348. For *Registry of Births, &c.*, see p. 153.

**REGIUS PROFESSOR**, a reader of lectures in the universities, founded by Henry VIII., who established five lectureships in each university of Oxford and Cambridge, namely of Divinity, Greek, Hebrew, Law, and Physic, the readers of which are called in the university statutes, *regii professores*.

**REGULAR CLERGY** were the religious orders who lived under some religious rule (*regala*), such as abbots or monks. In contradistinction were the secular clergy, namely, those who did not live under a religious rule, but had the care of souls, as bishops and priests. The clergy of the English and Irish established church comprehend all persons in holy orders.

**RELATOR**, a teller or informer; as where the attorney-general, at the *relation* of some person, files an information *ex officio* to have a public charity better established or regulated, the informer is called the relator.

**REMAINDER.** An estate limited to take effect and be enjoyed after another estate or interest therein has run out or been determined. Remainders are either *vested* or *contingent*; the first are those by which a present interest passes and is certain; the latter are dependent either upon a person uncertain, as one unborn, or upon the happening of an event which is dubious.

**REMANETS.** Causes which are postponed from one term to another, or from one sitting to another, are termed *remanets*.

**REMEMBRANCER**, formerly called clerk of the *remembrance*, an officer of the exchequer.

**RENT** is the money-service, or equivalent received by the landlord for the use of his land or tenements. A *fee-farm rent* is a perpetual rent service, reserved by the crown or by a subject upon a grant in fee simple. The purchaser of fee-farm rent, originally reserved to the crown, but sold under 22 Car. 2, c. 6, has the same power of distress the king had, and so may distrain on other lands of the tenant not subject to the rent.

**REPLEVY** is used for bailing a man, or giving security; in case of distress for rent, see p. 199.

**REPORTS.** These comprise the decisions on legal issues, which are preserved as authentic records in the archives of the several courts, and communicated to the public in numerous volumes, that furnish the lawyer's library. They contain a history of the several cases, with a summary of the proceedings, which are preserved at length in the record; the argument on both sides, and the reason the court gave for its judgment, taken down in short notes by persons present at the determination. The *Reports* are extant in a regular series, from the reign of Edward II. inclusive; and from his time to that of Henry VIII., were taken by the prothonotaries, or chief scribes of the court, at the expense of the crown, and published annually, whence they are known under the denomination of the *Year Books*. From the reign of Henry VIII. to the present period, the task has devolved on private and contemporary individuals, who, sometimes through haste or inaccuracy, sometimes through mistake and want of skill, have published imperfect and even contradictory accounts of one and the same decision. Each court has its reporters, and their volumes often contain trifling matters that swell them out to an unreasonable and useless bulk, and which has had the effect of making lawyers rely more on the judgments in particular cases than on the general principles of law that form the surest foundation of a sound legal opinion. The reports of cases occupy upwards of 200 volumes, exclusive of those which relate to election, admiralty, and ecclesiastical law; and it is calculated, that if they continue proportionally to increase to the end of the present century, they will occupy upwards of 1000 volumes. The statutes form scarcely a less voluminous compilation; a continuation of Viner's abridgment to the present time would occupy at least 100 folio volumes; and if the public acts continue to accumulate in the ratio of late years, they will amount, at the end of the century, to 14,000, exclusive of local and private statutes. Not one-fourth in number of the statutes are in force, and a digest of them is one of the law reforms projected. Chitty's digest of the statutes in two volumes is that mostly used by the Judges, and suffices for ordinary occasions. Difficulties enough, however, remain, and it may be readily conceived what a long and laborious task is imposed on the professional student, and how many

years of application are required to explore the great fountains of legal knowledge, so as to become tolerably acquainted with the administrative law of England.

**REPRISES**, used for abatements or deductions; as in speaking of the clear yearly value of a manor or estate, after deducting rent-charges or annuities, it is said to be so much per annum, besides all *reprises*.

**REST**, a term used in banking, to denote the undivided profits remaining at the period of balancing. The law so far recognises rests in mercantile and banking accounts as to allow interest to be charged upon a former ascertained balance. But unless sanctioned by the usage of trade, it is only by express agreement that a debt will carry interest.

**RETAIL BREWERS.** By 1 W. 4, c. 51, a brewer is to make entry of every place and of every mash tun intended to be used in brewing or in keeping worts, or beer, or storing malt or hops, at the nearest office of excise. Penalty for omission £200, and all worts, or beer, or materials for making the same, found in any place or mash tun, not specified in such entry, become forfeited. Officers may enter any place used by brewers, or retailers of beer, for the purpose of inspecting or taking an account of beer, malt, &c.; brewers or dealers obstructing such inspection to forfeit £100. No brewer, on penalty of £200, to have in his brewery, or any part of his entered premises, or in any mill connected with such brewery, any *raw* or *unmalted corn* or *grain*; and all unmalted corn or grain which shall be found, and all malted corn or grain with which unmalted corn or grain shall have been mixed, become forfeited, with all vessels or packages containing the same.

**RETAINER** is a fee or gratuity given to counsel, to secure his services, either *generally* or *specialy*, in the cause of a client. A *general* retainer, which is accompanied with a fee of five guineas, entitles the party who gives it to a preference in retaining the counsel to whom it is given, *specialy*, in an action in which such party may be concerned. It is the duty, therefore, of the barrister thus retained, in case a *special* retainer should be offered by the adverse party, to ascertain from his general client whether it is his intention to give a special retainer in the cause; and if, as is rarely the case, an answer be returned in the negative, he is then at liberty to accept the retainer of the other party. If no general retainer interfere, the advocate is bound to the party who gave the first special retainer. But a special retainer binds only in the particular *cause* named. And a special retainer on behalf of A. against B. may be superseded by a general retainer on behalf of B. C. and D. Such are the general rules of the bar, as stated in the *Law Magazine*; they require modification, and their application, in some recent cases, has

given rise to practices which seem hardly reconcilable to any common-sense notions of honour and integrity.

**RETURN** is most commonly used for the return of writs, which is the certificate of the sheriff of what he has done in the execution of writs directed to him, endorsed on the back, and delivered into the court whence issued on the day of the return, in order to be filed. *Return days*, or days *in banc*, are days in term so called. See *Terms*.

**RIDINGS** are the surname of the three territorial divisions of Yorkshire, into East, West, and North Riding. According to Blackstone, riding is a corruption of *trithing* or *trihing* (Sax. *trithinga*), meaning the third part of a county.

**RIVERS.** The right in a flowing stream, by the English law, is a public right; that is, a right not vested in one individual but common to all. The legal presumption is that the owner of each bank of a stream is the owner of one-half the bed over which it flows, but the exclusive ownership of the water is in neither. Every owner having an equal right to use the water which flows in the stream, no one can have the right to use the water so as to detriment, without consent, the coequal right of another. No owner can either diminish the supply of water which would otherwise descend upon the owners below, nor throw back the stream upon those above, so as to overflow or injure their lands. For the same reason no owner has the right to the use of a stream so as to injure the quality by which another is detrimented. The only modes in which the preference right to the use of running water, to the prejudice of others, can be obtained, are either proof of an actual grant or licence from the persons whose rights are affected, or proof of an uninterrupted enjoyment of such a privilege for such a period as the law considers sufficient to constitute a right by prescription. The period to establish this prescriptive immunity fixed upon by the courts of law has been twenty years, and this is the term that has been adopted in the 2 & 3 W. 4, c. 71, s. 2.

**ROASTED CORN.** By 3 G. 4, c. 53, persons not dealers in coffee may roast and sell corn, beans, peas, or parsnips, by taking out an annual licence from the commissioners of excise, for which they pay 2s. 6d. The premises where sold must be entered, and the packages marked "*Roasted Corn, Peas, Beans, or Parsnips,*" as the case may be. Penalty £50.

**ROGUE**, says Blackstone, is an idle, sturdy beggar: for the definition of, under the Vagrant Act, see p. 457.

**ROLL**, a schedule of parchment, that may be turned up with the hand, in the form of a pipe, and on which all the pleadings, memorials, and acts of courts are entered and filed with the proper officer; after which they become records of the court. *Rolls of parliament* are the manuscript registers of the proceed-

ings of the old parliaments. § *Calves'-head roll* was anciently a roll in the two Temples, in which every bencher, barrister, and student was yearly taxed at so much to the cook, and other officers, in consideration of a dinner of calves' heads in Easter term.

ROYAL BOROUGHS are municipal incorporations in Scotland, created by royal charter, and distinguished from *boroughs of barony*, which are held by grant from a subject. The exclusive immunities of the royal burghs have been nullified by the late statutes for the reform of the police and municipal corporations.

ROYAL FISH are *whale* and *sturgeon*, which belong to the king and queen in certain proportions, when either thrown on shore or caught near the coast. Of sturgeon the king is entitled to the whole himself; but of the whale he can only claim the *head*, and the queen the *tail*. The reason of this whimsical division, as assigned by the ancient records, is to furnish the queen's wardrobe with whalebone. But, as Mr. Christian remarked, the reason is more whimsical than the division, for the whalebone lies entirely in the head.

ROYALTIES are the rights of the king. *Cowel*.

RUBRICS, so called because anciently written in *red* letter; they are the titles of chapters in certain ancient law-books, and are more especially applicable to the directions laid down in the Liturgy for regulating the service of the Established Church.

RULE OF COURT, an order of one of the three superior courts of common law, made either between parties to a suit or motion, or to regulate the practice of the court. The rules which regulate the practice of the Court of Chancery are called *orders*.

RULES OF THE QUEEN'S BENCH are certain limits without the walls of the prison, within which debtors are allowed to live, on giving security to the marshal not to escape.

RUNNING LETTERS, in Scotch law of equivalent import to the English Habeas Corpus Act, which is unknown to the law of Scotland; and are a form by which a prisoner gets his trial brought on, or his release from confinement, if he is not brought to trial.

## S.

SACRILEGE, a desecration of anything reputed holy. The alienation of lands given for religious purposes to laymen was also so designated.

SALIC LAW. An ancient law made by Pharamond, King of the Franks, and adopted in many European countries, by which males only were capable of inheriting. It was the existence of this law in Hanover that precluded Queen Victoria from the regal inheritance of that kingdom. The same law prevails in France under the Imperial dynasty of Napoleon III.



**SALMON.** By 58 G. 3, c. 43, justices at sessions are empowered to appoint conservators of rivers for the preservation of the salmon, and fish of the salmon kind, and fix the time when such fish may be taken. Destroying salmon, or the spawn of salmon, by nets, engines, or other device, incurs a penalty of from £5 to £10 for the first offence, and for every subsequent offence from £10 to £15. Persons having in possession any spawn, fry, or unsizable salmon under 6 lb. weight, the same may be seized, and the offender made liable to penalty from £5 to £10. In Scotland by 9 G. 4, c. 39, no fish of the salmon kind to be taken between September 14 and February 1; penalty for taking or attempting to take salmon during this period not less than £1, nor exceeding £10, together with boat, net, or implements employed. Penalties are imposed by 7 & 8 V. c. 95, from 5s. to £10, on persons, without legal right or permission, taking salmon on any stream, lake, firth, or within one mile of low-water mark on any sea-shore.

**SALT SILVER**, one penny paid at the feast of St. Martin by the monks of some manors, as a commutation for carrying their lord's *salt* from market to his larder.

**SALVAGE**, an allowance made for saving ships or goods from enemies, or wreck, or loss at sea. See p. 355.

**SANCTUARY.** Ancient superstition gave peculiar privileges to consecrated ground, so that delinquents who took refuge there were protected from criminal justice. Thus, if a person, accused of any crime, except treason or sacrilege, had fled to a church, or churchyard, and, within forty days after, went in sackcloth and confessed his guilt before the coroner, disclosing all the circumstances of his offence, and thereupon took oath to abjure the realm, his life was spared, provided he observed the condition of his oath, by going with a cross in his hand, and with all convenient speed, embarking at the port assigned. By this abjuration, however, his blood was attainted, and he forfeited all his goods and chattels. These immunities were much abridged by 27 H. 8, c. 19, and 32 H. 8, c. 12; and, by the 21 Jac. 1, c. 28, all privilege of sanctuary is abolished.

**SATURDAY'S STOP**, a space of time from even-song on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland and the northern parts of England.

**SCAN. MAG.** *Scandalum Magnatum*, or great scandal, speaking words derogatory to peers, and high functionaries, and was a proceeding against the authors, compelling them to produce their authority. A peeress is not within the statute. But the proceeding is in disuse, and punishment by information or indictment the more usual course.

**SCAVERAGE**, a kind of toll or custom, exacted by mayors, sheriffs, &c., of merchant-strangers, for wares exposed to sale within their liberties, prohibited by the 19 H. 7, c. 7; and in the city

of London commuted for a sum of money payable by government, under 3 & 4 W. 4, c. 66.

**SCHOOL SITES.** Under 4 & 5 V. c. 38, amended by the 8 V. and 12 & 13 V. c. 49, landlords are enabled to give, sell, or exchange land not exceeding an acre, as a site for a school for the education of poor persons; the chancellors and councils of the duchies of Cornwall and Lancaster may make grants for similar purposes, together with corporations, trustees, &c. Any number of sites may be granted, though exceeding one acre in quantity, provided no single site exceeds that extent, and any number of sites may be granted in the same parish provided the aggregate quantity of land granted in the same parish does not exceed one acre. Trustees, &c., for the purposes of the act, may sell or exchange lands or buildings, and conveyances vest the fee-simple. By 14 & 15 V. c. 24, in the case of large or populous parishes, divided into two or more ecclesiastical districts, the word "parish" is to be construed to signify each such ecclesiastical district. The provisions of the acts are extended by 15 & 16 V. c. 49, to schools or colleges for yeomen or tradesmen, or others training for holy orders, &c.

**SCIENTIFIC SOCIETIES.** The 6 & 7 V. c. 36, exempts from county, borough, parochial, and other local rates, land and buildings pertaining to any society instituted for the purposes of Science, Literature, and the Fine Arts exclusively, and supported wholly, or in part, by annual voluntary contributions, without making any dividend or bonus to the contributors. The rules of societies desirous of exemption must be transmitted to the barrister who certifies the rules of Friendly Societies, a fee of one guinea being paid for his certificate. By 17 & 18 V. c. 112, greater legal facilities are afforded for procuring and settling sites and buildings in trust for institutions established for the promotion of Literature, Science, and the Fine Arts, or for the diffusion of useful knowledge. Lands not exceeding one acre in quantity may be granted, sold, or exchanged for the sites of such institutions, and contingent interests barred. Officers of the duchy of Lancaster and of the duchy of Cornwall are empowered, upon sufficient authority, to grant sites, ss. 2, 3. Persons not having the legal estate empowered to convey lands for the like purpose, without the concurrence of their trustees; also any lay or ecclesiastical corporation. Any number of sites may be granted for separate institutions, although the aggregate quantity of land exceed an acre, s. 10. When an institution is incorporated, property of institution to vest in the governing body, s. 20. Institutions incorporated or not may sue and be sued in name of president, chairman, secretary or clerk, as shall be determined by the rules and regulations of the institution. Any member in arrear of his subscription, or holding property belonging to the institution, or injuring its property, may be

sued, s. 25. Institutions are enabled to extend, modify, or abridge their purposes, but power given to the Board of Trade to suspend such alterations, if applied to by two-fifths of dissentients, ss. 27, 28. Upon a dissolution no member to receive a profit, but the surplus proceeds, if any, to be given to another institution. A member defined to be one who has paid a subscription according to the rules, or signed the list of members.

SCIRE FACIAS, the name of a judicial writ, most commonly to call a man to show cause to the court whence it issues why the execution of judgment passed against him should not be made out.

SCOT AND LOT. A term including all parochial assessments for the poor, the church, lighting, cleansing, and watching. The right of voting for members of parliament, and for municipal officers, used to be exclusively, in many places, vested in the payers of *scot* and *lot*.

SCOTLAND. The kingdom of Scotland, notwithstanding the union of the crowns, on the accession of James VI. to that of England, continued a separate and distinct kingdom for above a century after, though a union had long been projected, which was judged more feasible, as both nations were anciently under the same government, and still retained a great resemblance in their laws and institutions. Sir E. Coke supposes the common law of each to have been *originally* the same, especially as the most ancient and authentic law book of the Scotch, *Regiam Magistatam*, containing the rules of their ancient common law, is extremely similar to that of Glanvil, which contains the principles of the English common law as it stood in the reign of Henry II. The diversities subsisting between the two laws at present may be readily accounted for, from the diversity of practice in two large and uncommunicating jurisdictions, and from the acts of two distinct and independent parliaments, which have, in many respects, altered and abrogated the common law of both kingdoms. The great work of the Union between the two kingdoms was effected in 1707, by 6 Anne, c. 8, when twenty-five articles of union were agreed to by the parliaments of both nations, the substance of the most considerable being as follows:—1. That, on the 1st of May, 1707, and for ever after, the kingdoms of England and Scotland shall be united into one kingdom, by the name of Great Britain. 2. The succession to the monarchy of Great Britain shall be the same as was before settled with regard to that of England. 3. The United Kingdom shall be represented by one parliament. 4. There shall be a communication of all rights and privileges between the subjects of both kingdoms, except where it is otherwise agreed. 9. When England raises £2,000,000 by a land tax, Scotland shall raise £48,000. 16 & 17. The standards of the coin, of weights, and of measures, shall

be reduced to those of England, throughout the United Kingdom. 18. The laws relating to trade, customs, and the excise, shall be the same in Scotland as in England; but all the other laws of Scotland shall remain in force, though alterable by the parliament of Great Britain; yet with this proviso, that laws relating to public policy are alterable at the discretion of the parliament; laws relating to *private* rights are not to be altered but for the evident utility of the people of Scotland. 22. Sixteen peers are to be chosen to represent the peerage of Scotland in parliament, and forty-five members to sit in the House of Commons. 23. The sixteen peers of Scotland shall have all privileges of parliament, and all peers of Scotland shall be peers of Great Britain, and rank next after those of the same degree at the time of the Union, and shall have all privileges of peers, except sitting in the House of Lords, and voting on the trial of a peer. Upon these articles of Union, and the act relating thereto, two observations may be made. *First*, the church of Scotland and the four universities of that kingdom are established for ever, and all succeeding sovereigns are to take an oath inviolably to maintain them. *Secondly*, the municipal laws of Scotland are still ordained to be observed in that part of the island, unless altered by parliament; so that the municipal, or common law of England, is, for the most part, of no validity in Scotland. But acts of parliament, since the Union, in general extend to Scotland, unless the act itself provides expressly to the contrary. The eldest son of a Scotch peer cannot be elected one of the forty-five representatives, for he was incapable of sitting in the Scotch parliament before the Union, and the law in this respect has not been since changed. But the eldest son of a Scotch peer may represent any place in England. The landed qualifications of £600 and £300, required in England do not extend to Scotland; and a candidate for Scotch representation is only required to have the same qualification as the electors. By 16 & 17 V. c. 89, no person appointed to the office of professor, regent, or other office, in any of the universities or colleges of Scotland, such office not being that of principal or a chair of theology, shall be required to subscribe the Confession of Faith, under the 4th of Anne, for securing the Protestant religion and Presbyterian church government: instead of such subscription a declaration to be made.

MERCANTILE LAW AMENDMENT, 1856.—In matters of *trade and commerce* inconvenience having been felt from the laws of Scotland being in some respects different from those of England and Ireland, the law of Scotland is amended by 19 & 20 V. c. 60. By s. 1, where goods have been sold, but not delivered to the purchaser, it is no longer competent for the creditor of

the seller to attach the goods. Seller not entitled to a right of retention generally against a *second* purchaser, who buys them before delivery, of the first purchaser; s. 2, seller not held to warrant goods unless there be an express warranty in the contract. Guarantees to be in writing, and guarantees to a firm not to be binding after any change of the firm; ss. 6, 7, no acceptance of a bill of exchange, whether inland or foreign, binds the acceptor, unless it be in writing. All bills drawn within the United Kingdom of Great Britain and Ireland, and the islands adjacent, or any ports within the same, to be held to be inland bills. Notice of the dishonour of inland bills to be given as in the case of foreign bills, by the law of Scotland. In relation to remedies and claims for repairs or supplies to ships, every port within the United Kingdom is to be deemed a home port, s. 18. The laws of England and Ireland, where different, are assimilated to these amendments in the law of Scotland, by 19 & 20 V. c. 97.

SCRIVENER, one who is employed to draw up and engross deeds, conveyances, and securities for money.

SCUTAGE was a tax of contribution, raised by those that held lands by knight's service, towards furnishing the king's army, at one, two, or three marks for every knight's fee. 1 *Bl.* 309.

SEAL DAYS, certain days in the Court of Chancery, appointed by the court, before or after term, to hear motions and other judicial matters; they are four in number, and each seal is usually at the interval of about a week.

SEALER, an officer in the Court of Chancery, whose duty was to seal writs, and other legal instruments in the presence of the lord chancellor; office ceased under 3 W. 4, c. 3. There is also a *sealer* of the writs issued by the other courts of Westminster, the profits of which office, formerly part of the king's ancient hereditary revenues, were vested in the Duke of Grafton, by alienation from the crown, in the reign of Charles II.

SECONDARIES, officers next or second to the chief officer, as the secondaries of the sheriffs of London.

SEDERUNT, *acts of*, ordinances of the court of sessions in Scotland, under the authority of the stat. 1540, c. 93, by which authority is given to the court to make such regulations as may be necessary for the ordering of processes and expediting of justice, *Bell's Dict.*

SEIGNIOR. Applied to the lord of a fee or manor, and a fee manor or lordship is thence denominated a *seignior*.

SEIGNORAGE, a deduction from bullion brought to the Mint to be exchanged for coin.

SEISIN, in the common law, signifies possession.

SENESCHAL, a steward with the power of dispensing justice; as the high seneschal or steward of England.

SEPTUAGINT, the seventy interpreters of the Bible, who were in truth seventy-two, namely, six out of every one of the twelve tribes, *Litt. Dict.*

SEQUESTRATION is the setting aside from both parties the matter in controversy. It is also a kind of execution for debt in the case of a beneficed clergyman; the profits of the benefice being paid over to the debtor until his claim be satisfied. The profits of a benefice may be also *sequestered* during a vacancy, and received by the churchwardens appointed by the bishop, for the benefit of the next incumbent. By the custom of London, if a citizen owe money to another and abscond, leaving goods in a house locked up, in such case the creditor may *sequester* the house and goods, and in six days' time condemn them. In the mercantile law of Scotland, sequestration is equivalent to the process of bankruptcy in England.

SERJEANTS-AT-ARMS. Their office is to attend the royal person, to arrest offenders of rank, and attend on the lord high steward of England, sitting in judgment on traitors. Their number is limited to thirty by 13 R. 2, c. 6. Two of them attend on the houses of parliament, one on the lord chancellor, one on the lord treasurer, and one on the lord mayor of London, on extraordinary occasions. They are in the old books called *Virgaturies*, because they carried silver rods, gilt with gold, as they now do maces.

SERMONIUM was an interlude or historical play acted on high procession days, in the body of the church or cathedral, by the inferior clergy, and was a mingled dramatic and religious celebration. Such were the ancient mysteries, and the ceremony of the Boy-Bishop. The Eton Montem is the only remaining example of these shows.

SERVITOR, a serving-man, especially applied to scholars in the colleges of the universities, upon the foundation.

SESSIONS, the sitting of justices in court by virtue of their commission. Every county is divided into certain divisions, and though the legal qualities of a division are not very well ascertained, yet it is recognised by several acts of parliament; and by 9 G. 4, c. 43, amended by 10 G. 4, c. 46, justices are empowered to make such divisions of counties as are most convenient for the despatch of sessional and magisterial business. The justices residing in each division, although their commission extends to the whole county, yet, except at general or quarter sessions, ordinarily confine themselves to matters arising within the division. Within this limit they have generally one or more stated places, where they meet at certain stated times, monthly or oftener, as the public business may require, and there transact all such matters of a summary nature as, by law, requires the presence of more than one justice, and yet need not be done at general, quarter, or special sessions. These meet-

ings are properly *petty sessions*. *Special sessions* are meetings held by the justices of divisions for some especial purpose, by notice, specifying the time, the place, and purpose. These are held in pursuance of sundry statutes, directing particular things (the diversion of highways, for instance) to be done at such meetings. As the time and place of these meetings are occasional, and vary with the object, a reasonable notice to all the magistrates of the division is necessary to render the orders made there valid. The *general quarter sessions* are held four times a year, in each county, for the trial of larceny, assaults, and misdemeanors, punishable with transportation, fine, imprisonment, or whipping; the more atrocious offences, as murder and burglaries, being left to be tried at the county assizes. The 12 & 13 V. c. 45, amends the procedure in general and quarter sessions of the peace, especially in appeal cases.

*SESSION, of parliament*, includes the entire term from the assembling to the prorogation by royal authority of both houses. But the assembling and prorogation are not sufficient to constitute a session, unless one bill at least have passed both houses, and received the royal assent. The progress which a *measure* makes in one session does not influence its position in the next, or in any other; for, if not completed previous to the prorogation, it must in any following session be commenced afresh.

*SET-OFF* is where two persons, having *opposite* demands against each other, the one sets his demand against the demand of the other, either in whole or in part. In litigation, *set-off* is a defence raised by the defendant, in order to counterbalance the demand of the plaintiff; and is allowable in actions of debt, covenant, assumpsit, and for non-payment of money; but is not allowable in actions on the case, trespass, or replevin; nor in debt on bond conditioned for the performance of covenants; nor against a distress, nor in the case of uncertain damages.

*SETTLEMENT*, in its most general sense is a disposition of property for certain purposes by the owner, who, in relation to such disposition, is called the settler or grantor. A settlement may be either by deed or will, but the term is most commonly applied only to settlements by deed. A consideration is not necessary for the validity of a deed at law. Though a deed may in many cases be void as against strangers for want of consideration, it is valid as between the parties. Settlements by deed, therefore, may either be made upon good consideration, or they may be purely voluntary. The most usual and important species of settlements are those pertaining to Marriage, and may be either such as are made previous to and in consideration of marriage or subsequent to it. For parochial settlement, see p. 108.

*SETTLEMENT, Act of*, the 12 & 13 W. 3, by which the crown was limited to the house of Hanover, being Protestants, and

some new provisions were added strengthening the constitutional securities of the Bill of Rights.

**SEVERALTY.** An estate in *severalty* is where it is held by one person in his own exclusive right, without any other being joined or interested therein.

**SEVERANCE**, the singling or parting of two or more joined in one writ of action. *Severance of corn* is the cutting and carrying it off from the ground; and the setting out tithe from the rest of the corn is called a *severance*.

**SEWER**, a place, according to Lord Coke, where water issues. Many statutes have been passed relating to sewers, and the defence of the land against the sea and land-floods, but the most comprehensive is the 3 & 4 W. 4, c. 22, amended by 12 & 13 V. c. 50, and other acts. According to these acts no commissioner of sewers who has not already acted as such can be hereafter appointed, unless possessed of a clear income of £100 a year, arising from land, tenements, or hereditaments, freehold or copyhold, or held for a term of not less than sixty years absolute; or held for a term of not less than twenty-one years, of which ten are unexpired, of the clear yearly value of £200; or heir apparent of a person possessed of £200 a year clear: or unless as the agent of some person possessed of property to the amount of £300 a year: penalty £100 for acting without qualification. But no mayor, bailiff, or other ex-officio commissioner required to qualify. Every commission to continue in force ten years, unless sooner determined. Commissioners may make separate rates for every separate level, valley, or district, and appoint surveyors, collectors, and other officers for the same. Commissioners empowered to impose fines not exceeding 40s.; they may also appoint dyke-reeves, who must be occupiers of not less than ten acres of sewable land. Persons not keeping in repair any bank, flood-gate, sewer, &c., to which they are liable, the repairs may be executed by commissioners after seven days' notice, the parties liable being charged with the expense thereof. *Metropolitan Sewers Acts* are 11 & 12 V. c. 112, amended by 12 & 13 V. c. 93, 14 & 15 V. c. 75, and confirmed by 15 & 16 V. c. 64. By 14 & 15 V. c. 75, the crown may appoint a chairman and deputy chairman from the Metropolitan Commissioners of Sewers, the chairman to have a salary not exceeding £1000. Two Commissioners, one being the chairman or deputy chairman, to be a quorum. If two commissioners, or chairman, or a deputy, do not meet within one hour after time appointed for a court, the court to be adjourned. Where, under former acts, signature of six commissioners to any rate warrant, or other matter is requisite, two to suffice; except in case of a special sewers rate, or mortgage, and no sewers rate to exceed *threepence* in the pound. See *Metropolis and Local Management Act*.



**SHIP-MONEY**, an ancient impost charged upon the ports, towns, cities, boroughs, and counties of the kingdom, which was revived in the time of Charles I., by writs called *ship-writs*, for providing ships for the king's service. Such a mode of raising money is declared illegal by the Petition of Rights.

**SHIPPER**, a Dutch word, signifying master of a ship, but used for a common seaman; a skipper.

**SHIRE**, or county, for the terms are synonymous, is the name of the districts into which the United Kingdom is divided. The origin of this local division of the island cannot be ascertained. It has been ascribed to Alfred, but Asser, in his history of that prince, does not mention the fact. Sir F. Palgrave has shown the shire in many cases to have been identical with Saxon states or kingdoms. The staff of officers attached to shires, namely, the lord lieutenant, custos rotulorum, or keeper of the county records, high sheriff, receiver-general of taxes, coroners, justices and clerk of the peace, attest the great importance of this territorial division in the civil government of the kingdom.

**SIDESMEN**, officers yearly chosen, according to custom, in great parishes, to assist the churchwardens.

**SIGNET**, is one of the king's seals, used in sealing his private letters, and all such grants as pass his majesty's hand by bill signed, the seal is always in the custody of the king's secretaries, and there are four clerks of the signet-office attending them, 2 *Inst.* 556.

**SIGN MANUAL**. The signature or subscription of the queen is so called, and is usually placed at the top left hand corner of the instrument. It must be countersigned by a principal secretary of state, or by the lords of the treasury; when attached to a grant or warrant, to be accompanied by the signet or privy seal.

**SILVER**. By 56 G. 3, c. 68, amended by 12 & 13 V. c. 41, the standard silver is eleven ounces two pennyweights of fine, and eighteen pennyweights of alloy in the pound troy; and in weight, after the rate of sixty-six shillings to every pound troy, whether coined in crowns or any pieces of a lower denomination. No tender in silver exceeding 40s. is declared by the first act to be legal. From the Conquest to the 20 Edward 3, a pound sterling was *actually* a pound troy weight, which was divided into twenty shillings; so if ten pounds at that time was the price of a horse, the same quantity of silver was paid for it as is now given if its price be thirty-three pounds. This, therefore, is one great cause of the apparent difference in the prices of commodities in ancient and modern times. About the year 1347, Edward III. coined twenty-two shillings out of a pound; and five years after, coined twenty-five shillings out of the same quantity. Henry VII. increased the number of shillings to

forty, which was the standard number till the beginning of the reign of Elizabeth, who coined a pound sterling into sixty-two shillings.

**SIMILITUDE OF HANDWRITING.** The mere similitude of handwriting in two papers shown to a jury, without other concurrent testimony, is no evidence that *both* were written by the same person. But the testimony of witnesses acquainted with the party's hand, that they believe the paper in question to have been written by him, is evidence to be left to a jury, 1 *Burr*, 644.

**SINECURE** is where a rector of a parish has a vicar under him, endowed and charged with the cure, so that the rector is not obliged either to do duty or reside. Also, when a church is fallen down and the parish becomes destitute of parishioners, it is said to be a sinecure. Power is granted to bishops, in certain cases, by 1 & 2 V. c. 106, s. 16, to unite with other benefices sinecure rectories.

**SITTINGS**, the name given to the courts of *Nisi Prius* in London and Middlesex; those for Middlesex were established in the reign of Elizabeth, empowering the chief justices to try within the term, or within four days after the end of the term, all the issues joined in the Courts of Chancery and Queen's Bench; and that the chief justice of the common pleas and the chief baron should try, in like manner, the issues joined in their respective courts. In the absence of the chief, the same authority is given to two of the judges or barons of the court. The 1 W. 4, c. 70, provides, that not more than *twenty-four days* after Hilary, Trinity, and Michaelmas term, nor more than *six days* after Easter term, each exclusive of Sundays, shall be appropriated to SITTINGS in London and Middlesex for the trial of issues of fact; provided that a day may be appointed for a trial at bar, and the day so appointed for the purpose be taken to be a part of the preceding term; provided also, that a day may, by consent of parties, be appointed for trial of any cause at *Nisi Prius*, such day not being within the twenty-four days mentioned.

**SIX CLERKS.** These have been abolished, with other officers of the Court of Chancery, and their duties, by 5 & 6 V. c. 103, transferred to the clerk of enrolments.

**SLAVE TRADE.** By 3 & 4 W. 4, c. 73, it was provided, that slavery should cease throughout the British dominions, Aug. 1, 1834. For the compensation of the persons entitled to the services of the manumitted slaves, the sum of £20,000,000 was granted, to be apportioned among the nineteen colonies of the West Indies, the Cape of Good Hope, and Mauritius. The act does not extend to the East Indies, Ceylon, or St. Helena.

**SLAUGHTERING HOUSES.** By 26 G. 3, c. 71, any person keep-

ing a place for slaughtering horses, geldings, asses, sheep, hogs, or other cattle, not killed for butcher's meat, shall obtain a licence from the quarter sessions, first producing from the parish a certificate of fitness and ability. Persons slaughtering horses or cattle without licence are guilty of felony, and may be transported. Inspectors are chosen annually, and their occupation inscribed over their dwellings. The act does not extend to curriers, fellmongers, tanners, or persons killing aged or distempered cattle; but such persons killing *sound* cattle are liable to a penalty of £20. The licence must be annually renewed, by 7 & 8 V. c. 87, and obstructing inspector in his duty, penalty £10. Persons keeping slaughtering houses must print or affix their names over the door or gate of their premises, or penalty for neglect, by 12 & 13 V. c. 92, s. 7, any sum not exceeding £5. By the same act, horses or other cattle brought to be slaughtered must have the hair forthwith cut from the neck, and be killed within three days; during the three days they must (by s. 7) be supplied with "a sufficient quantity of fit and wholesome food and water;" penalty for omission, not exceeding £5. Using or employing any horse or cattle intended for slaughter subjects to a penalty not above 40s. Books must be kept, containing a description of the animals for slaughter, their colour, marks, and gender, and refusing inspection thereof to justice or constable, penalty any sum not above 40s. Improperly conveying any animal in a vehicle for slaughter, so as to subject it to unnecessary pain or suffering, penalty for first offence not above £3, for a second offence £5. Horse-slaughters cannot at the same time be licensed as horse-dealers. By the City of London Sewers Act, all slaughter houses to be licensed, and to be subject to inspection. Inspectors of slaughter houses to inspect *meat* hawked about or exposed for sale, and destroy the same if unfit for human food. Offenders exposing unwholesome meat to forfeit not above £5 for each offence.

SNUFF, mixing it with fustic, yellow ebony, touchwood, logwood, red or Guinea wood, braziletto or Jamaica wood, Nicaragua, Saunders, or any other wood; or any walnut-tree, hop, sycamore, or other leaves, herbs, or plants, incurs a penalty of £200, by 29 G. 3, c. 68; and having any such materials in possession is a forfeiture thereof, and of £50.

SOC or SOKE (*Sax.*), power or liberty to administer justice and execute laws; also the territory or limits within which such power is exercised: hence, *soca* is used for a seignior, or lordship, with the franchise of holding a court of sockmen. *Socage* is applied, in its most general sense, to a tenure by any fixed or determined service.

SOLICITOR, one who is entitled to transact business in Chancery, same as is done by an attorney in the courts of common law.

**SPECIALTY**, a bond, bill, or such like instrument; a writing or deed, under the hand and seal of the parties.

**SPINSTER**, a legal addition usually given to unmarried women, derived from their supposed occupation in spinning.

**SPIRITS**. Under this denomination are included all inflammable spirits raised by distillation, as brandy, rum, Geneva, whisky, gin, &c., and the strength of which for the purposes of taxation is ascertained by Sikes's hydrometer. By 6 G. 4, c. 80, all spirits distilled or made in the United Kingdom are deemed *British spirits*; all spirits of the first extraction drawn by one distillation of wash are called *low wines*; all spirits produced by re-distillation of low wines, or any further re-distillation, and conveyed into feints receiver, are called *feints*; all other spirits produced by re-distillation, and which have not had any flavour given them, and all liquors mixed with such spirits, are called *plain British spirits*: all other spirits produced by re-distillation, and which have had a *flavour* given them, and all liquors mixed with such spirits, are deemed a British compound, called *British brandy*; other spirits produced by re-distillation, and which have been mixed with juniper berries, carraway seeds, aniseeds, or any other seeds or ingredients, and all liquors mixed with such spirits, are called *British compounds*; lastly, all British spirits of the strength of forty-three per cent. above proof, and all spirits of a greater degree of strength, are called *spirits of wine*. No dealer in British spirits shall sell, or have in his possession, any plain British spirits, except spirits of wine, of any strength *exceeding* the strength of twenty-five per centum above hydrometer proof, or of any strength *below* seventeen per centum under hydrometer proof; or any compounded spirits, except shrub, of any greater strength than seventeen per centum under hydrometer proof; on pain of forfeiting all such spirits as shall be sold, had, or kept, by such dealer, with the casks or packages containing the same; which may be seized by any officer of excise. No licence to be granted for retailing spirits within *gaols, houses of correction, or workhouses for parish poor*; nor are spirits to be used there, except as medicinally prescribed by a regular physician or apothecary. Penalty for offences committed by gaolers or masters of workhouses, £100. Persons *hawking spirits*, to forfeit them and £100, and may be convicted by one justice; and if the penalty be not paid immediately, committed to the House of Correction for three months, or until paid. Any person may detain a hawker of spirits, and give notice to a peace officer, who is to carry the offender before a justice.

**SPRING GUNS**. By the 7 & 8 G. 4, c. 18, if any person set, or suffer to continue in his grounds, any spring gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, upon any trespasser or other person coming in

contact therewith, he shall be guilty of a *misdeemeanor*. Not to extend to any gin or trap set to destroy vermin; nor to any engine placed for the protection of a *dwelling-house* from sunset to sunrise. Act does not extend to Scotland.

SPIRITUAL PERSONS include such as are licensed, or otherwise allowed to perform the duty of any ecclesiastical office whatever, 1 & 2 V. c. 106. *Spiritualities of a bishop* are those ecclesiastical profits which he receives as a bishop, and not as a baron of parliament.

STALLAGE, a compensation or sum of money paid to the lord or owner of the foil, for the liberty to erect stalls, or to remove a stall from one part of a fair to another.

STAMP DUTIES. These are under the management of the Commissioners of Inland Revenue, and form an important branch of the public income; they were first imposed in the reign of William III.; and include a variety of duties levied on receipts, bills, and notes, licences, indentures of apprenticeship, agreements, bonds, bills of lading, conveyances, and other legal instruments. Stamps always denote the price of the particular stamp, or the tax levied on the stamped instrument, and sometimes they denote the nature of the instrument itself. If the instrument is written upon paper, the stamp is impressed in relief upon the paper itself; but to a parchment instrument the stamp is attached by paste and a small piece of lead, which itself forms part of the impression. The stamp acts render an unstamped instrument void, but an unstamped instrument, though insufficient to found a proceeding at law, may be used as evidence; to defeat, defend, and, with certain limitations, to establish a criminal charge. The general rule of law is, that fraudulent evasion of the duties shall be punished by the forfeiture of all benefit from the document which ought to be stamped; and that a just claim shall not be evaded, or a fraud be effected, because the just claimant has *unintentionally* violated the stamp laws.

The stamp duties have lately undergone many and important modifications. In 1850 the 13 & 14 V. c. 97, introduced a more equitable scale of duties, proportioned to the amount of consideration money paid or secured, and rendered less expensive small transactions requiring the use of legal vouchers. In conveyances, leases, bonds, mortgages, or warrant of attorney, for securing payment of a definite sum, the duties imposed where the consideration is inconsiderable, were reduced to an almost nominal amount. In agreements no reduction was made in the amount of duty, but the range of the low duty was extended; and every agreement, not otherwise charged, where the matter of it is of the value of £20, made chargeable only with a duty of 2s. 6d., with a progressive duty for every fifteen folios beyond fifteen. The duty on a lease for a year, as also the additional

duties upon feoffments, and bargains and sales enrolled, were abolished.

In 1853 important changes were made, the 16 & 17 V. c. 59, introducing a *uniform penny stamp* on receipts, drafts, or orders. In lieu of the former progressive duty on receipts, commencing at £5, the substituted duty of 1*d.* commenced at £2; and the same uniform rate of one penny extended to all higher sums. The receipt duty of 1*d.* must be paid by the person giving the receipt.

The receipt may either be written upon stamped paper, or an adhesive stamp may be affixed to the paper upon which it is written; but in the latter case the person giving the receipt must himself cancel the stamp by writing his initials, or some portion of his signature, over it, before he delivers it, under a penalty of £10. A receipt cannot be made valid afterwards by affixing a stamp.

A person giving a receipt for money amounting to 40*s.* or upwards without a stamp subjects himself to a penalty of £10; and if, when 40*s.* or upwards is paid, a less sum than 40*s.* be specified in the receipt with the view to avoid the duty, or any other contrivance or device be used for the like purpose, a penalty of £50 will be incurred.

A party refusing to give a receipt incurs a penalty of £10.

Any note, memorandum, or writing whatsoever given upon the payment of money, signifying that an account has been discharged, or that money has been paid, or credit given, is a receipt liable to stamp duty. If, therefore, the person receiving money write, or by means of a stamp impress upon any bill of parcels or invoice the word "paid," "settled," "balanced," "discharged," or any words of a like import, intended to signify the payment of money, he must at the same time, if the paper be not already stamped, affix thereto an adhesive receipt stamp, and cancel the same by writing his initials, or some portion of his signature thereon. If he omit so to do, he will incur a penalty of £10, and the memorandum will be of no avail to the person to whom it is given.

Entries made by persons receiving money in *Pass Books* kept by the persons paying the money, are receipts; and for every such entry made without affixing a stamp, and writing over the stamp, as hereinbefore stated, where the payment amounts to 40*s.* or upwards, a penalty of £10 is incurred.

On every occasion when money amounting to 40*s.* or upwards is paid, whether it be on a sale by auction or other ready money dealing, or the payment of wages, or on a transaction of any other kind or description, if any receipt be given it must be on a stamp; and so, likewise, must a receipt for money paid on account.

Receipts, discharges, or acknowledgments, given upon pay-

ments made by or with bills, drafts, notes, or other securities, are receipts chargeable with stamp duty. Any receipt, therefore, given on such an occasion, or any memorandum signifying that a bill, draft, note, or other security has been given or delivered in satisfaction or on account of any demand, must be stamped.

Receipts written upon promissory notes, bills of exchange, drafts or orders for the payment of money, duly stamped, or upon bills of exchange drawn out of but payable in the United Kingdom, are exempt from duty.

The receipts here alluded to are receipts for the money specified in such documents, given on the payment thereof. A special receipt, therefore, written on a bill or note when paid, intended to operate as a discharge of any particular demand, besides that arising on the bill or note itself, requires a receipt stamp.

Except in the case of bills drawn abroad, an unstamped receipt indorsed is valid only where the bill or note is duly stamped. A receipt, therefore, on an unstamped cheque, for the contents, is not valid without a receipt stamp. To make the cheque available as a voucher, it should be drawn payable to order, instead of to bearer, and a one penny draft stamp affixed thereto.

Where money due upon a bill or note is payable by instalments, the payments may be written off on the back of the bill or note by the holder; but if a receipt be given to the person making any such payment, it must be stamped.

*Letters by the post*, acknowledging the safe arrival of any bills of exchange, bank notes, or other promissory notes, or other securities for money, are exempt from receipt duty; but if the receipt of money be acknowledged, a stamp is required.

Where advice is given by letter to a person that money has been paid to his credit, a letter in return, merely acknowledging the receipt of the letter containing such advice, is not chargeable as a receipt; but any intimation that the money has been received is liable.

Receipts for land tax, assessed taxes, and property and income tax, are exempted from stamp duty; but there is no exemption in any of the Stamp Acts of receipts for any other rates or taxes.

A bill of exchange, draft, or order for the payment *to the bearer, or to order on demand*, of any sum of money, of whatever amount, whether drawn upon a banker, or upon any other person, is chargeable with the stamp duty of one penny, and may be written on stamped paper, or an adhesive stamp may be used. All other bills of exchange, drafts, or orders *at or after sight or after date*, for the payment of money amounting to 40s. or upwards, are chargeable with stamp duty.

It is right, however, to state, that all negotiable or transferable drafts for sums under 20s. are illegal; when, therefore, a payment is intended to be made by draft of a sum under 20s., the draft should not be made payable either to bearer or to order, but only to the party in whose favour it is drawn. In any such case, if it be payable on demand it will require the penny stamp; if otherwise than on demand it will not require a stamp.

A draft or order payable generally, without reference to any stated period after the issuing of it, is payable on demand; and any draft or order, though not made payable to bearer or to order, is chargeable with the same amount of duty as if so payable, if it be delivered to the person in whose favour it is drawn, or to any person on his behalf.

No alteration has been made in the duties on promissory notes, except that bankers' deposit notes or accountable receipts are not now chargeable with duty, notwithstanding they import that interest is to be paid.

All documents or writings usually termed letters of credit are declared by law to be bills, drafts, or orders for the payment of money, and chargeable with stamp duty as bills of exchange, drafts, or orders. A letter of credit payable on demand must be on a penny stamp; but if the credit be not given until a specified day, or until advised, it is a bill of exchange payable after date, and must be stamped accordingly.

A *cheque* on a banker payable to bearer on demand is not liable to stamp duty, provided that it be issued within fifteen miles of the place where the banker carries on his business; that the place of issuing be truly specified in it; that it be dated on or before the day on which it is issued, and not after; and that it do not direct the payment to be made by a bill or note.

The most frequent irregularity in regard to cheques is the issuing of them at a distance of more than fifteen miles from the banker on whom drawn. A cheque so issued is, if not stamped, illegal; and the person issuing it, and the banker knowingly paying it, incur the penalty of £100 each; and the person knowingly receiving it in payment or as a security incurs a penalty of £20. The place at which a cheque is to be considered as issued is that where the drawer parts with the possession of it; and if it be transmitted by him through the post, the place of issuing is that where it is posted.

The object and effect of crossing a cheque with the name of a banker is often misunderstood. A cheque is not in any way affected by being thus crossed; the crossing merely amounts to a request to the banker not to pay the cheque, except through a banker; but this request he may altogether disregard—it does



not and is not intended to import a receipt, and neither creates a necessity for a stamp, nor makes a stamped receipt unnecessary.

*Stamp Duties on Receipts, Bills, Drafts, or Orders.*

			Duty.		
			£	s.	d.
<i>Receipt</i> , amounting to £2 or upwards . . . . .			0	0	1
<i>Scrip Certificate</i> . . . . .			0	0	1
<i>Newspaper</i> , if posted . . . . .			0	0	1
<i>Draft or Order</i> on demand . . . . .			0	0	1
<i>Bills</i> not on demand, and Notes both on demand and not on demand; except to <i>bearer on demand</i> , which last can only be issued by licensed bankers :—					
Not exceeding £5 . . . . .			0	0	1
Exceeding £5 and not exceeding £10 . . . . .			0	0	2
"    10                    "    25 . . . . .			0	0	3
"    25                    "    50 . . . . .			0	0	6
"    50                    "    75 . . . . .			0	0	9
"    75                    "    100 . . . . .			0	1	0
"    100                   "    200 . . . . .			0	2	0
"    200                   "    300 . . . . .			0	3	0
"    300                   "    400 . . . . .			0	4	0
"    400                   "    500 . . . . .			0	5	0
"    500                   "    750 . . . . .			0	7	6
"    750                   "    1000 . . . . .			0	10	0
"    1000                  "    1500 . . . . .			0	15	0
"    1500                  "    2000 . . . . .			1	0	0
"    2000                  "    3000 . . . . .			1	10	0
"    3000                  "    4000 . . . . .			2	0	0
"    4000 and upwards . . . . .			2	5	0
Foreign Bills, in sets or otherwise, drawn in but payable out of the United Kingdom; or, both drawn and payable out of, but indorsed or negotiated within the kingdom, for which latter adhesive stamps to be used. If drawn singly or otherwise than in a set of three or more, the same Duty as on an inland Bill. If in a set of three or more, for every Bill of each set :					
Not exceeding £25 . . . . .			0	0	1
Exceeding £25 and not exceeding £50 . . . . .			0	0	2
"    50                    "    75 . . . . .			0	0	3
"    75                    "    100 . . . . .			0	0	4
"    100                   "    200 . . . . .			0	0	8

			Duty.		
			£	s.	d.
Exceeding 200 and not exceeding	300	.	0	1	0
"	300	" 400	0	1	4
"	400	" 500	0	1	8
"	500	" 750	0	2	6
"	750	" 1000	0	3	4
"	1000	" 1500	0	5	0
"	1500	" 2000	0	6	8
"	2000	" 3000	0	10	0
"	3000	" 4000	0	13	4
"	4000	.	0	15	0
Drawn out of and payable within the kingdom, the same Duty as on an Inland Bill.					
Bill of lading	.	.	0	0	6
Articles of Clerkship, as attorney, solicitor, or proctor, in England or Ireland	.	.	80	0	0
Bonds given as Security for any definite sum of money, not exceeding £50	.	.	0	1	3
For every £50, or fractional part to £300	.	.	0	1	3
For every £100 or fractional part where above £300	.	.	3	2	6
And progressive duty on words, for every entire 1,080 words, above the first 1,080.					
<i>Mortgages</i> the same as Bonds.					
Conveyances, when the purchase or consideration shall not exceed £25	.	.	0	2	6
For every £25, or fractional part above the first £25, to £300	.	.	0	2	6
For every £50, or fractional part above £300, to £600	.	.	0	5	0
For every £100, or fractional part above £600.	.	.	0	10	0
Where the consideration is an annual sum pay- able in perpetuity or for any indefinite period, the duty is the same as on a lease for a term exceeding 100 years.					
And progressive duty on words.					
<i>Leases, or Tacks of Lands or Tenements</i> , without rent, for any term, or at a rent under £20 per annum, for a term not exceeding 35 years, in consideration of premium, the same duty as on conveyance for a like amount.					
Leases not exceeding 35 years, at a yearly rent, without fine, not exceeding £5	.	.	0	0	6
Above £5, for every £5 and fraction to £25	.	.	0	0	6
Above £25, for every £25 and fraction to £100	.	.	0	2	6
Above £100, for every £50 and fraction	.	.	0	5	0

*Probates of Wills, and Letters of Administration.*

				With a Will.			Without a Will.		
				£	s.	d.	£	s.	d.
Above the value of £20 and under £50 .				—			0	10	0
"	50	"	100	—			1	0	0
"	20	"	100	0	10	0	—		
"	100	"	200	2	0	0	3	0	0
"	200	"	300	5	0	0	8	0	0
"	300	"	450	8	0	0	11	0	0
"	450	"	600	11	0	0	15	0	0
"	600	"	800	15	0	0	22	0	0
"	800	"	1,000	22	0	0	30	0	0
"	1,000	"	1,500	30	0	0	45	0	0
"	1,500	"	2,000	40	0	0	60	0	0
"	2,000	"	3,000	50	0	0	75	0	0
"	3,000	"	4,000	60	0	0	90	0	0
"	4,000	"	5,000	80	0	0	120	0	0
"	5,000	"	6,000	100	0	0	150	0	0
"	6,000	"	7,000	120	0	0	180	0	0
"	7,000	"	8,000	140	0	0	210	0	0
"	8,000	"	9,000	160	0	0	240	0	0
"	9,000	"	10,000	180	0	0	270	0	0
Continuing to increase up to £1,000,000.									

*Instruments of Proxies.*—By 19 & 20 V. c. 81, the duties on instruments of proxies are reduced, and the duty on every letter of attorney, commission, factory, mandate, or other instrument, made for the sole purpose of appointing a proxy to vote at any meeting of proprietors or shareholders in any joint-stock company, or at any parish meeting of heritors in Scotland, the stamp is *sixpence*.

By s. 4, admissions to the freedom of the city of London by redemption are exempted from stamp duty.

*Agreements.*—For an amount of £20 or upwards, 2s. 6d.; and for every entire 1080 words beyond the first, 2s. 6d. additional.

For annual stamp licences, see *Licences*, in DICTIONARY.

*Apprentices' Indentures.*

				£	s.	d.
When the premium is under £30 . . . .				1	0	0
If £30 and under £50 . . . .				2	0	0
50	"	100	. . . .	3	0	0
100	"	200	. . . .	6	0	0
200	"	300	. . . .	12	0	0
300	"	400	. . . .	20	0	0
400	"	500	. . . .	25	0	0
500	"	600	. . . .	30	0	0
600	"	800	. . . .	40	0	0

	£	s.	d.
If 800 and under 1000 . . . . .	50	0	0
1000 and upwards . . . . .	60	0	0
If no premium . . . . .	0	2	6

*Life Insurances.*

Policy of insurance made upon any life, or upon any event or contingency depending upon any life, where the sum insured shall not exceed £500, for every £50 . . . . .	0	0	6
Exceeding £500 and not £1,000, for every £100 . . . . .	0	1	0
Exceeding £1,000, for every £1000 . . . . .	0	10	0
Policy of insurance from loss or damage by fire . . . . .	0	1	0
And for every £100 insured for a year, and for any fractional part of £100, annually, per cent. . . . .	0	3	0

*Fire Insurance.*

\* By 19 & 20 V. c. 22, the duties in respect of every insurance of property from loss or damage by fire are made payable, whether made by any company or person, within or *out* of the United Kingdom, or whether policy, note, or memorandum is made, signed, or issued in the United Kingdom or elsewhere. The persons insured are made chargeable with the duties where insurances have been effected with unlicensed foreign companies, s. 2. All persons who shall as agents receive proposals, &c., for insurance by companies out of the United Kingdom, are deemed persons keeping an office for insuring property from loss by fire. Such persons required to take out licences, and give security for the payment of duties under a penalty of £100 for every day's omission.

*Marine Insurances.*

	£	s.	d.
Where the premium or consideration for such insurance does not exceed the rate of 10s. per cent. on the sum insured . . . . .	0	0	3
Exceeding 10s. and not exceeding 20s. per cent. . . . .	0	0	6
Exceeding 20s. and not exceeding 30s. per cent. . . . .	0	1	0
Exceeding 30s. and not exceeding 40s. per cent. . . . .	0	2	0
Exceeding 40s. and not exceeding 50s. per cent. . . . .	0	3	0
Exceeding 50s. per cent. . . . .	0	4	0
If the separate interests of two or more persons be insured by one policy, the duties to be charged for each . . . . .	0	5	0
Charter party . . . . .	0	5	0

£ s. d.

<i>Debenture</i> or Certificate for drawback on goods exported, where the drawback to be received shall not exceed £10 . . . . .	0	1	0
Exceeding £10 and not exceeding £50 . . . . .	0	2	6
Exceeding £50 . . . . .	0	5	0

Stamps are now used instead of payments by fees in proceedings in Bankruptcy and Insolvency, in the High Court of Admiralty, and in Chancery.

*Duties on Legacies and on Succession to Real Property.*

Of the value of £20 or upwards, out of Personal Estate, or charged upon Real Estate, &c., and upon every share of residue:—

To a child or parent, or any lineal descendant or ancestor of the deceased, £1 per cent.; to a brother or sister, or their descendants, £3 per cent.; to an uncle or aunt, or their descendants, £5 per cent.; to a great uncle or great aunt, or their descendants, £6 per cent.; to any other relation, or any stranger in blood, £10 per cent. Legacy to husband or wife exempt.

It was in 1853, by 16 & 17 V. c. 51, the legacy duty was extended to *real estate*, and the duty made payable on succession both to landed and personal property. By s. 18, a succession of less value than £100 is exempt from duty; and no duty is payable upon any succession estimated of less value than £20 in the whole, or which would be exempted under the Legacy Duties' Act. Leasehold estates not chargeable with legacy duty as personal estates, s. 19. Succession duty made a first charge on property. Notice of a succession to be given to the commissioners, and a return made of the property. Penalty for neglect, or not making return proportioned to the rate of duty payable. Returns to be verified by production of books and documents.

**STANDING ARMY.** The maintenance of a standing army in the time of peace is illegal, by the 1 W. & M. c. 2, s. 2. It is only, therefore, kept on foot by the annual Mutiny Act.

**STANNARIES**, Latin *stannum*, "tin," are the districts of Cornwall and Devon, where the tin-mines are wrought and the metal purified. They form part of the duchy of Cornwall, erected by Edward III. and granted to the Black Prince, from whom they are inherited by the Prince of Wales. The miners and tanners are privileged to sue and be sued only in their own courts, held before the lord warden or his deputy; so that they may not be drawn from their business to attend law-suits in distant courts. The tin duties have been abolished, the stannary courts remodelled, and further regulations have been made respecting them, by 2 & 3 V. c. 58.

**STAPLE**, a mart or market: also any goods generally vendible and not subject to perish. *Statute staple* is of the same nature

as statute-merchant, and a bond of record acknowledged before the mayor of the staple, by virtue of which the creditor might forthwith have execution of the body, land, and goods of the debtor.

STATUTE.—See *Acts of Parliament* in the Dict., and p. 26.

STATUTE-DUTY. Until the passing of 5 & 6 W. 4, c. 50, the inhabitants and occupiers of land and tenements were obliged to furnish horses, carts, and labourers, in certain proportions, for the repair of the highways which was called *statute-duty*.

STATUTE OF FRAUDS, one of several useful statutes passed in the reign of Charles II., and the provisions of which have been stated (p. 334), to prevent disputes and frauds in the transfer of property, by requiring in many cases written evidence of an agreement. Before this enactment many conveyances of land were made without any writing as evidence of the conveyance. An estate in fee-simple could be conveyed by livery of seisin, accompanied with proper words, and a use could be declared by parol. No writing was necessary to convey an estate in possession, for such an estate was said to lie in livery, but a reversion could only be conveyed by deed. All this was changed by the Statute of Frauds, which also introduced salutary precautions in the sale of goods, and which have been extended by subsequent acts.

STATUTE-MERCHANT, a bond of record, by which the obligor conditions that if the debt be not paid at the day execution may be awarded against his body, land, and goods.

STEAM-ENGINES. In prosecutions for the abatement of nuisances from the furnaces of steam-engines, the Court is empowered by the 1 & 2 G. 4, c. 41, to award costs to the prosecutors; and, in case of conviction, may make an order, without consent of the proprietor, for altering the construction of furnaces, so that the nuisance in future may be abated. But this power does not extend to the proprietors of engines *solely* employed in the working of mines or smelting of ores, on or immediately adjoining the premises. See *Smoke Nuisance*, p. 495.

STERLING, a term by which genuine English money is discriminated. It is derived from the *Esterlings* or merchants of East Germany, who, by command of King John, manufactured a more pure and perfect coin. Hoveden writes it *esterling*.

STOCK-JOBING. By 7 G. 2, c. 8, all stock-jobbing not authorized by act of parliament, or by charter, is made void, and the undertakings declared nuisances. All *premiums* to deliver or receive, accept or refuse, any public stock, or share therein, at a future time, and contracts in the nature of *wages*, *puts*, and refusals relating to the value of stocks, are void; and the premiums must be returned, or may be recovered by action with double costs; and the persons entering into or executing any such contract to forfeit £500. No money to be given to compound any *difference*, for not delivering or transferring stock, or

not performing contracts ; but the whole money agreed on is to be paid, and the stock transferred, on pain of £100: this, however, is not to hinder lending money on stock, or contracts for re-delivering or transferring thereon, so as no premium be paid for the loan more than legal interest. Time bargains in *foreign* funds are not within the prohibitions of the statute, nor illegal at common law, *Elsworth v. Cole*, 2 M. & W. 31. Instructions to brokers for the sale and transfer of stock, to be valid, must be in writing.

STAR-CHAMBER, an arbitrary tribunal, whose judges were the chief members of the crown, that took cognizance of almost every description of offences, short of those that inflicted capital punishment. It was established under 3 H. 7; but having greatly exceeded its original powers, was abolished by 16 Car. 1, c. 16.

STORES, naval and military, include all arms and munitions of war. By 3 & 4 W. 4, c. 52, all stores may be prohibited to be exported by proclamation or order in council; as also provisions, or any sort of victual which may be used as food by man.

STRAND, or STROND (*Stræ*), any shore or bank of the sea or great river; hence the street of that name in London. So in Clarke's Chaucer—

And Custance, with a deadly pale face,  
The fourthe day toward the ship she went;  
— And, kneeling on the *strond*,  
She saide, “ Lord! aye welcome be thy sond.”

STRANDING is where a ship, by accident, and out of the ordinary course of her voyage, gets upon the ground or strand, and receives injury in consequence. Negligence of the crew does not discharge the underwriter, if the loss is occasioned by one of the perils insured against, *Bishop v. Pentland*, M. & R. 42.

SUBINFEUDATION had some analogy to the existing practice of underletting in Ireland: it was where the inferiors, in imitation of their superiors, began to carve out and grant to others smaller estates than their own, to be held of themselves, and so proceeding downwards, till the superior lords observed that, by this method of subinfeudation, they lost all their feudal profits of wardships, marriages, and escheats, which fell into the hands of the middle lords, who were the next superiors of the *terre-tenant*, or him who occupied the land.

SUB-DEACON, an ancient officer in the church, made by the delivery of an empty platter and cup by the bishop, and of a pitcher, basin, and towel by the archdeacon; his office was to wait on the deacon, and carry away the plate with the offerings at sacraments. *Cowel*.

SUBPENA, a writ whereby the party is called to appear at the day and place assigned, under a penalty of £100; it is the leading process in courts of equity to oblige the defendant to appear and answer; and, by 45 G. 3, c. 92, the service of a subpoena on

parties or witnesses in any part of the United Kingdom is valid to compel an appearance in any other part, the expenses being tendered. A witness is allowed his necessary expenses of the journey, but is not in general entitled to remuneration for *loss of time*; though in some instances it is allowed to attorneys and medical practitioners. The expense of making scientific experiments, with a view to evidence, is not allowable, 3 *Bar. & Cres.* 72.

**SUBSISTENCE MONEY** is the money paid to soldiers *weekly*; which is short of their *full* pay, because their clothes, accoutrements, &c., are to be accounted for. It is, likewise, the money advanced to officers till their accounts are made up, which is commonly once a year, when their arrears are discharged.

**SUFFRAGAN**, a vicar ordained by the bishop of the diocese to assist him in his spiritual duties; or one who supplies the place of the bishop; it is also applied to the bishops themselves, in contradistinction to their metropolitan or archbishop.

**SUIT** is the form of application to the judicial power of the state, for the redress of injuries alleged to be sustained. Law-suits, both in the courts of common law and in equity, are almost invariably carried on by attorneys or solicitors in the name of the plaintiff or defendant; and the proceedings therein, according to the established principles of law, and the rules of the courts, constitute the "practice" of the profession. See *CIVIL PROCEDURE*, p. 39.

**SUITORS' FUND** originated under the Long Parliament, which directed all monies of malignants and delinquents to be paid into the dead stock of the Court of Chancery, and applied to the public service. Its amount is considerable, from money unclaimed belonging to suitors in that Court; it is regulated by 5 V. c. 5, and under various acts of parliament has been charged with salaries and pensions for vice-chancellors, masters in chancery, and with compensation allowances for abolished offices.

**SUMMER-HOUSE SILVER**, a payment to the lords of the wood in the wealds of Kent, who used to visit those parts in summer, when the sub-tenants were bound to prepare little summer-houses for their reception, or else pay a composition in money. *Cowel*.

**SUMMONS**, a notice from a justice to a person to appear before him, to answer some charge, and, if not obeyed, is commonly followed by the more compulsory process of a warrant for his apprehension. In criminal charges, as assaults, theft, and other felonies, and also in cases where the body of the offender is liable, a warrant is the regular process not a summons. Within the metropolis limits, a summons is served by delivering a copy of it to the accused party, or his wife, servant, or some adult inmate of his family explaining to the wife its purport, 2 & 3 V. c. 71.

**SUPERCARGO**, as the name imports, is a person employed by



merchants to overlook and take care of the cargo of a ship during the voyage, and dispose of it to the best advantage at the place of destination.

**SUPERIOR COURTS.** These are the courts of Westminster, especially the Court of Chancery, the Queen's Bench, and Common Pleas, which, in general, have a superintendence over the inferior courts.

**SUPERSTITIOUS USES.** A devise of lands or goods for the maintenance of a priest or chaplain, to celebrate masses, pray for the soul of the deceased, to abridge the term of purgatory, or for a lamp to be kept perpetually burning in a chapel, are superstitious uses, by 1 E. 6, c. 14. Such bequests were frequent in popish times, and are still continued in Ireland. The 2 & 3 W. 4, c. 115, made some change in the law respecting superstitious uses, by placing Roman Catholics on the same footing as Protestant Dissenters in respect of bequests relative to their religious worship, schools, and charities. But though it is now lawful to give money by will for Catholic schools, or for promoting the Roman Catholic religion, it is not lawful to give money for masses and prayers for the soul of the testator. See *Jews* in DICTIONARY.

**SURPLICE FEES** are ecclesiastical dues payable to the clergy on marriages, churchings, christenings, and burials.

**SURROGATE** is one that is substituted or appointed in the room of another; as the bishop or chancellor's surrogate. *Cowel.*

**SUS. PER COL.**, an abbreviation for *suspendatur per collum*; and which, in the days of Latin, the judges used to write on the calendar left with the sheriff, opposite the name of any prisoner sentenced to be "hanged by the neck."

**SWANIMOTE**, a court held twice a year before the verderers, concerning matters of the forest.

**SWEETS**, home-made wines, the retailers of which in less quantities than fifteen gallons are required to take out an excise licence.

**SYNGRAPH**, a deed, bond, or writing, under the hand and seal of all the parties; it was the custom for both the debtor and creditor in writings obligatory to write their names and the sum borrowed on a piece of paper, with the word *SYNOGRAPHUS* in large letters in the middle; which being cut through, one part of the paper was delivered to each party, for their better security.

## T.

**TABARD.** Bachelor-scholars, on the foundation of Queen's College, Oxford, are called tabarders, from a short gown worn by them called *tabard*. *Cowel.*

**TABLE RENTS**, the rents paid to bishops and others, towards their table or house-keeping expenses.

**TACK** (Scotch), a lease; *tack duty*, the rent reserved on a lease.

**TAIL**, from the French *tailler*, to cut or carve. See *Entail*.

**TAILZIE**, in Scotch the equivalent of the English word entail, which last has colloquially superseded it in Scotland.

**TALLY**, a stick cut in two parts, on each of which is marked with notches, or otherwise, what is due between debtor and creditor; the ancient way of keeping accounts, one part being kept by the debtor and the other by the creditor. From the time of Henry I., till the reign of Queen Anne, the legal tender money of England consisted of wooden tallies issued by the Exchequer, which circulated concurrently with the coins or metallic money of the realm, and which were received as exchequer bills now are, in the payment of taxes: the counter-tally was laid up in a safe place, while the other half circulated from hand to hand till brought in by the last person who had given value for it, to be taken up in money or exchanged. The burning of the old exchequer tallies, by over-heating the flues, is considered to have been the cause of the destruction by fire of both houses of parliament in 1834.

**TALLYMAN**, a person that sells or lends clothes, goods, or the like, to be paid for by so much per week, month, or other periodical period.

**TARIFF**, a table specifying the duties, drawbacks, and bounties charged or allowed on the export or import of articles of foreign and domestic produce. The British tariff has undergone seven important alterations since the commencement of the century, namely, in 1809, 1819, 1825, 1833, 1842, 1846, and in 1853; the last consolidating act of duties and drawbacks being the 16 & 17 V. c. 107.

**TAXING COSTS**. Submitting the bills of attorneys to the masters of the respective courts, who make such deductions therein as they think reasonable, and the remaining charges allowed are certified, and called the masters' *allocatur*.

**TEA**. By 17 G. 3, c. 29, *every person*, whether a dealer in or seller of tea or not, who shall dye or fabricate any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of the ash, elder, or other tree, shrub, or plant, in *imitation of tea*, or who shall mix or colour such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or other ingredient, or who shall sell or expose to sale, or have in custody, any such adulterations in imitation of tea, he shall, for every pound, forfeit, on conviction by the oath of one witness, before one justice, £5, or, on non-payment, be committed to the house of correction for not exceeding twelve, nor less than six months.

**TEINDS** (Scotch) tithes; *teind-masters*, those entitled to tithes.

**TEMPLARS**, a religious order of Knighthood instituted about the year 1119; so called, because they dwelt in part of the

buildings belonging to the Temple of Jerusalem, not far from the sepulchre. *Cowel.*

**TENANT-RIGHT**, a species of customary estates in the northern parts of England, by which border services against Scotland were rendered before the union with England. Under this tenure, estates were held of the lord of the manor, or by the payment of certain customary rents, and the render of border services; and were inheritable, and not devisable by will till made devisable by 1 V. c. 26. In certain districts of Ireland, tenant-right exists, or is claimed of a different kind; consisting of the claim of the tenant on the expiration of his lease, on the landlord, for reimbursement on account of capital laid out and fixed in unexhausted improvements of the owner's lands.

**TENDER**, of money, or other satisfaction, is in many cases, a bar to an action. A tender of bank notes is good, unless specially objected to at the time, 33 *Rep.* 654. So is a tender of foreign coin made current by proclamation. So is a tender of provincial bank notes, or a draft on a banker, unless objected to, *Peake*, 239. With respect to the persons to whom the tender should be made, it is sufficient if it be to the creditor, or any authorized agent. Tender to an attorney authorized to sue out a writ is good, *Douglas*, 623. A bailiff who makes a distress cannot delegate his authority; therefore, a tender to *his agent* is insufficient. A tender to one of several creditors is a tender to all. By several modern statutes, particularly 11 G. 2, c. 19, in case of irregularity in the method of *distraining*; 24 G. 2, c. 24, in case of mistakes committed by justices of the peace; 28 G. 3, c. 37, in cases of error by custom-house officers; and 23 G. 3, c. 70, in respect of mistakes by excise officers, the party may tender compensation to the party injured, and it will be a bar to all actions, whether he thinks proper to accept it or not.

**TENEMENT** includes land, houses, and every species of real property which may be held, or in respect of which a person may be a *tenant*.

**TENTHS**. Tenths and fifteenths were temporary aids issuing out of personal property, and granted to the king by parliament. They were formerly the real tenth or fifteenth, when chattel or movable property was much less considerable than at the present day.

**TERMS** are periods of the year in which the courts sit for the administration of justice, and are four in number, Hilary, Easter, Trinity, and Michaelmas. Easter and Trinity terms used to be movable, being regulated by the festival of Easter; but by 1 W. 4, c. 70, the period for the commencement and duration of each term is definitely fixed. According to this act, Hilary term begins on the 11th and ends on the 31st January; Easter term begins on the 15th of April and ends on the 8th of May; Trinity begins on the 22nd of May and ends on the 12th of June; and Michaelmas

term begins on the 2nd and ends on the 25th of November. With respect to the *General Return Days*, the 1 W. 4, c. 3, enacts, that writs returnable before the Court of Queen's Bench, Common Pleas, or Exchequer, may be made returnable on the third day exclusive before the commencement of the term, or on any day, not being Sunday, between that day and the third day exclusive before the last day of term; the day for appearance to be the third day exclusive after such return, or in case the third shall be Sunday, then on the fourth day. Where the day of the month on which any term is to end, falls on Sunday, the following Monday to be the last day of term; and in case any of the days between the Thursday before and the Wednesday next after Easter, fall within Easter term, such days to be deemed part of such term, though there be no sittings in banc on such intervening days.

**TERRE-TENANT**, the actual possessor of the land.

**TERRIER**, a land roll or survey of lands, either of a single person or of a parish, containing the quantity of acres, tenants' names, and the like.

**THANE**, the title of those who attended the English-Saxon kings in their courts, and who held lands immediately of those kings.

**THEATRES**. These are regulated by 6 & 7 V. c. 68, which, after repeating certain acts or parts of acts relative to theatres, except as to licences already granted, provides that no person shall keep open any house or place for the public performance of stage plays without the authority of letters patent, or a licence from the Lord Chamberlain, or the justices of the peace, under a penalty of a sum not exceeding £20 for every day such house shall have been kept open without licence. The Lord Chamberlain is to have authority to grant licences to theatres within the parliamentary boundaries of London and Westminster, and the boroughs of Finsbury, Marylebone, the Tower Hamlets, Lambeth, and Southwark; also within New Windsor and Brighton, and wherever her majesty may occasionally reside; but no licence to be granted within Oxford or Cambridge, or within fourteen miles of the same, without the consent of the chancellors or vice-chancellors of the same. For every such licence a fee is to be paid to the Lord Chamberlain, to be fixed by himself, according to a scale, but not to exceed ten shillings for each calendar month during which the theatre is licensed to continue open. Elsewhere the justices are to grant licences, but the fee to their clerk is not to exceed five shillings a month. The licence in all cases is only to be granted to the actual and responsible manager for the time being, whose name and place of abode shall be printed on every play-bill issued by him; and who shall become bound himself in a sum not exceeding £500, with two sureties for sums not exceeding £100

each, for due observance of the rules respecting theatres in force at the time, and for payment of penalties for any breach of the same. The Lord Chamberlain and the justices, within their jurisdictions, may suspend any licence in cases of riot or misbehaviour, or order the theatres to be closed on any public occasion; any theatre opened in contravention of such orders to be deemed an unlicensed theatre, and the manager subject to the penalties thereby incurred. Persons performing for hire in any *unlicensed theatre*, or causing, permitting, or suffering to be acted, any part in any stage-play, to forfeit, at the discretion of the justices, a sum not exceeding £5 for every day on which they offend. No new play or additions to old ones, no new or altered prologue or epilogue, to be acted or recited, till copies have been deposited with the Lord Chamberlain seven days at least before the intended representation, signed by the manager, with the place where, and the time when, it is intended to produce the same, and accompanied with a fee not exceeding two guineas: but the period of seven days is not to be reckoned to run till the fee is paid. The Lord Chamberlain, or his deputy, may except to the whole or any part of such play, prologue, or epilogue, and upon such disallowance, or before the expiration of the seven days, if any person shall represent, or cause to be represented, any such play, &c., he shall become liable to a penalty affixed by the justices before whom he is convicted, of any sum not exceeding £50 for each offence, and the licence, in case of there being such, becomes void. Wherever money or other reward is taken for admission, directly or indirectly; or where the purchase of an article of some kind is made a condition of admission; or wherever distilled or fermented liquors are sold, the actors are to be deemed as acting for hire; and in cases of proceedings against persons for keeping an unlicensed place, or for acting for hire therein, the burden of proof shall lie on the party accused, and such place, unless proved to the contrary, be taken to be unlicensed. No person to be prosecuted under this act unless the prosecution be commenced within six months after the committal of the offence. The word "stage-play" is declared to include all theatrical entertainments whatever; but the act is not to apply to booths or shows exhibiting at any lawful fair, allowed by the magistrates. An agreement for a partnership to act plays contrary to the statute, would not be enforced by the courts, *Ewing v. Osbaldiston*, 2 M. & C. 53. Within the metropolis limits, unlicensed theatres to which admission is obtained by payment of money, may be entered by the police, the owner of the place subjected to fine and imprisonment, and persons found therein may be fined, 2 & 3 V. c. 47.

**TICKET-OF-LEAVE**, a licence granted to a convict for good behaviour in a penal settlement or at home, to be at large and re-

turn to the place where he was convicted, but revocable on misconduct or relapse into crime. Convicts in the colonies holding tickets-of-leave may acquire and possess *personal* property, with the right of maintaining any action for the recovery of such property, or for any damage or injury done; but they are incapable of holding *real* property until they have obtained an absolute or unconditional pardon. On the revocation of any ticket-of-leave, all property acquired by the convict becomes forfeited to the queen, to be disposed of at the discretion of the governor of the settlement, subject to the instructions of the Secretary of State.

**TINEWALD**, the ancient parliament, or convention of the people of the Isle of Man.

**TIPSTAFFS**. Officers appointed by the marshal of the queen's bench, to attend upon the judges with a rod or staff tipped with silver, who take into custody prisoners either committed or turned over by the judges at chambers.

**TOBACCO**. The provisions against the culture of tobacco in Britain are, by 1 & 2 W. 4, c. 13, extended to Ireland, and the growth of tobacco in any part of the United Kingdom is prohibited under a penalty of £10, except in a medicinal garden to the extent of one half pole. Dealers in tobacco or snuff, having any such prohibited tobacco in any quantity in possession, or any other person to the amount of one pound, is subject to a penalty of £100. Persons employed in the adulteration of tobacco with herbs or other material, or vending the same, may be imprisoned six months, or fined £100. Persons cutting walnut-tree, hop, sycamore, or other leaves, in *imitation* of tobacco, forfeit £100. Mixing any ingredient, except water, with tobacco, exceeding two per cent., or with snuff exceeding four per cent., subjects the same to forfeiture, 3 & 4 V. c. 18. Having in possession any sugar, treacle, commings, lime, ochre, sea-weed, ground or unground chicory, or similar adulterations, subjects, under 5 & 6 V. c. 93, to a penalty of £200. The removal of any quantity of tobacco above the weight of *four pounds*, or of snuff above *two pounds*, without a permit, is prohibited on pain of forfeiture.

**TORT**, a French word from the Latin *tortus*; a wrong or injury.

**TOURN**, or **TURN**, a court, incident to the office of sheriff; so called from the sheriff taking a *turn* or circuit about his shire, and holding his court in several places.

**TOWN** is the generic term for a city, borough, vill or tithing. To be a town, it is not necessary that it should be incorporated, nor send members to parliament, nor have the privilege of a market. And it has been held, that wherever there is a constable, there is a township, 1 *T. R.* 376.

**TRAVERSE**. When a defendant denies or disputes the aver-

ments of the plaintiff's declaration, he is said to traverse. In this sense it is used when a party indicted of a misdemeanor, traverses or denies the indictment, so that it stands over till the ensuing sessions.

**TREES.** If a tree grow near the boundary of the land of two persons, so that the roots extend under the soil of each, the property in the tree belongs to the owner of the land in which the tree was first sown or planted, *Moo. & Malk.* 112. *Timber trees* include oak, ash, and elm; or in some places by local custom, beech and others which are commonly used for building, are, on that account, considered as timber. The oldest houses in London are built of beech-wood, which, when old, is not easily distinguished from oak.

**TRIAL AT BAR**, a trial which takes place before all the judges, at the bar of the court in which the action is brought.

**TRIENNIAL ELECTIONS.** By 6 W. & M. c. 2, the utmost period allowed the same parliament to sit is three years; after the expiration of which, reckoning from the return of the first summons, parliament ceased to have a legal existence. But by the 1 G. 1, c. 38, under the pretext of guarding against the designs of the papists, and to prevent the expense and animosities occasioned by frequent elections, the term was prolonged to seven years.

**TRINITY-HOUSE** is a kind of college, incorporated by charter, in 1514; re-incorporated and extended in 1685, from thirteen to thirty-one brethren. The corporation, originally a company of pilots for the royal navy, consists, at present, of a master, deputy, four wardens, eight assistants, and seventeen brethren. Eleven of the thirty-one members are usually men of high station, and twenty experienced commanders of merchant ships; the master and deputy are chosen annually. The chief functions of Trinity corporation consist in examining and licensing pilots, in erecting seamarks and lighthouses, in superintending the navigation of the river Thames, and in the appointment of the harbour masters, on which they have a veto.

**TRIALS**, such as are chosen by the court to examine whether a challenge made to the jury, or any of them, is just.

**TROPHY-MONEY**, money formerly raised towards providing for the London militia.

**TROVER.** An action of trover lies for goods which one has found and refuses to restore to the owner; or if another has my goods, by delivery to him or otherwise, and he sells or uses them without my consent, this is a conversion, for which trover lies; so, too, if he does not actually convert them, but refuses to deliver them to me on demand.

**TURNPIKES.** The turnpike roads are placed under the management and direction of certain bodies of trustees, who are usually named and appointed by the respective acts of parlia-

ment, which are occasionally passed for the purpose of making, repairing, and sustaining the particular roads therein specified; but the power of these statutes being confined to separate and distinct objects, it has been thought expedient to pass some general laws, which should apply in common to all trustees and turnpike roads throughout the kingdom. These general provisions are chiefly comprised in the 3 G. 4, c. 126; amended by 4 G. 4, c. 95; 7 & 8 G. 4, c. 24; 9 G. 4, c. 77; 1 & 2 W. 4, c. 25; 4 W. 4, c. 80; 5 W. 4, c. 81; 2 & 3 V. c. 45, and c. 47; 4 & 5 V. c. 33; and 12 & 13 V. c. 46; which acts determine the curvature of wheels, what are nuisances on the highways, exemptions from toll, the repair of roads, and other matters incidental to the preservation and management of turnpikes. Trustees or commissioners may alter the direction of any road over waste or common land without making any satisfaction, and also through any private lands, by tendering a satisfaction to the owner. But they are not allowed to deviate more than 100 yards from the present line of road, over any private grounds, without the consent of the owners in writing, nor make a road more than 60 feet in width.

*Exemption from Toll.*—Horses or carriages attending or going to attend the queen, or any of the royal family, or returning from such attendance. Horses and carriages conveying materials for roads and bridges, or manure (except lime, or tolls imposed by local acts), or agricultural produce not sold, or for sale; and also horses employed in husbandry. Persons going or returning from church or other place of religious worship, tolerated by law, on Sunday. But this exemption does not extend to any toll at any gate within five miles of the Royal Exchange in London, or within five miles of Westminster Hall in the city of Westminster. Persons going or returning from the funeral of any person who shall die and be buried within the parish. Ministers attending their religious duty, or going or returning from visiting any sick parishioner, or other parochial duty; officers conveying vagrants or prisoners; officers of the army, or soldiers on duty; horses and carriages used by the corps of yeomanry; horses or police-van in the service of the metropolitan police; persons going or returning from the election of any knight of the shire. No toll can be taken for any horse, ass, sheep, swine, or other beast or cattle of any kind whatsoever, or of any waggon, cart, vehicle, or other carriage whatsoever, or carriage which shall only cross any turnpike road, or shall not pass above 100 yards thereon, 4 & 5 V. c. 33; nor for any horse, ass, sheep, swine, or other beast or cattle going or returning from water or pasture, or from being shod or farried, provided they do not pass on the road more than two miles, going or returning; but this does not extend to any toll-bar within six miles of London Bridge. Post-horses having passed



through any gate may return toll-free before nine in the morning of the following day. Persons claiming an exemption from toll, who are not entitled thereto, are liable to a penalty not exceeding £5.

*Penalties on Toll-collectors.*—Toll-collectors are required to inscribe their names in conspicuous characters on the front of their houses, and if taking more or less than the toll, or refusing to give their names to persons demanding the same, after paying the toll, or obstructing or hindering any passenger in passing through any toll-gate, or using any scurrilous or abusive language to any traveller or passenger; in every such case the toll-collector is liable to a penalty not exceeding £5. *A table of tolls*, in large and conspicuous characters, is to be put up by the trustees. By 7 & 8 G. 4, c. 24, s. 6, trustees of roads may direct lamps to be lighted up at toll-houses, and collectors or lessees of roads neglecting so to do, are subject to a penalty of 20s. Persons damaging such lamps, or extinguishing the light, are subject to a penalty of 40s.

*Mile-stones* and direction posts are to be erected: also, the names of towns and villages at the entrance thereto, and stones marking the boundaries of parishes. Penalty for injuring or defacing the same, not exceeding £10.

*Union of Turnpike Trusts.*—For the better and more economical management of turnpike trusts, it is provided by an act of 1849, the 12 & 13 V. c. 46, that where the general annual meetings of the trustees of two or more turnpike roads have for three years next preceding been held at the same place, or at places distant not more than ten miles from each other, two or more of the trustees of each of such roads may call a joint meeting of the trustees of such several roads, of which meeting twenty-one days' previous notice must be given; and if at such joint meeting it be deemed expedient by a majority, being not less than two-thirds of the trustees of each of the trusts so proposed to be united, the trusts may be united, on assent being obtained from creditors. The united trust to be subject to liabilities and entitled to tolls of each trust so united. But special provisions of the General Turnpike Acts, as to amount of tolls, exemptions, and the like, not to apply to the united trust, only to the particular roads to which they are applicable. Nor does anything in the act affect the rights or interests of any person in office under the trust.

*Nuisances.*—Persons riding on the footpaths; killing, dressing, or scalding any cattle or swine on or near the sides of the road; gypsies erecting their tents or booths on or near the side of the road; blacksmiths suffering the light of their shops to shine on the road after twilight; persons making bonfires, or letting off fireworks, or baiting bulls, or playing at football, cricket, or other game, on the road, or sides thereof; persons

leaving waggons, &c., without any person in the care of them for longer time than necessary; lastly, persons destroying or damaging any lamp or lamp-post, are all nuisances, and persons committing them are liable for every offence to forfeit not exceeding 40s. over and above the damage occasioned thereby. Owners of lands adjoining turnpike roads are to cut and trim their hedges to the height of six feet, and to lop the branches of trees, shrubs, or bushes adjacent. Penalty, after due complaint and notice, for every twenty-four feet of hedge, 2s., and for every tree, bush, or shrub, 2d. But no person can be compelled to cut or prune any hedge except between the last day of September and the last day of March. By 7 & 8 G. 4, c. 30, destroying or injuring any turnpike-gate, toll-house, or weighing-machine, subjects to transportation, fine, or imprisonment. By 2 & 3 V. c. 45, to prevent accidents, the proprietors of any railway are required to maintain gates, and proper persons to open and shut the same, where any railway crosses any turnpike road, highway, or statute labour road.

*Watering the roads.*—On particular roads the trustees are empowered to direct them to be watered, and to impose an additional toll to defray the expense thereof; at any general meeting for the purpose the trustees may order such roads to be watered, and additional toll paid, for any time from March 1 to November 1 following; and such additional toll may be collected, under the same penalties as any other toll payable on such roads, 3 G. 4, c. 126, s. 120.

*Gates and doors* must open *inwards*, so as not to project over road or footpath; such as are contrary to the act, not being removed fourteen days after notice, may be removed by the surveyor, the expense to be defrayed by the owner, and a fine not exceeding 40s. inflicted.

*Names of owners.*—The owner of every waggon, wain, cart, or such-like carriage, is required to paint on the right, or off side, his Christian, surname, and abode, at full length, in large legible characters of not less than one inch in height. Penalty not exceeding £5.

*Penalties on drivers.*—One driver may take charge of two carts, if drawn by only one horse each. But this does not extend to carts within ten miles of London or Westminster. No child under the age of thirteen to drive any cart. Penalty on the owner not exceeding 10s. Driver of waggons, carts, &c., riding thereon, (except in cases of such light carts as are usually driven with reins) or wilfully being at such distance from the same that he cannot have any government of his horses; or driving any vehicle without the owner's name; or not keeping the left or near side of the road, shall, for every offence, forfeit not exceeding 40s., or, if the owner, £5; and, in default of payment, be committed to the House of Correction for not exceed-

ing one month. Drivers refusing to discover their names in any of these cases are liable to be imprisoned three months.— For the regulations of *Carts* and *Drays* in the metropolis, see p. 228.

By the 7 G. 4, c. 142, for improving the roads in the vicinity of the metropolis, north of the Thames, the powers of trustees of the roads there specified, and also the execution of the provisions of the General Turnpike Acts, already mentioned, are vested in a general board of commissioners, consisting of the members of parliament for Middlesex, London, and Westminster, and thirty-two others, who are vested with entire power for the making, mending, widening, lighting, watching and watering the roads within their jurisdiction.

TURN or TOURN. The sheriff's tourn or rotation is a court of record held twice every year before the sheriffs in different parts of the county. It is the court-leet of the county, as the county court is the court baron.

## U.

UNFUNDED DEBT. A mass of floating debt due by Government, chiefly under the form of exchequer bills, that have been issued to meet any public exigence, for which no provision had been made, or the provision had proved insufficient, or not forthcoming at the time wanted.

UNION. The consolidation of two churches into one benefice, which is allowed by 37 H. 8, c. 21, and 4 & 5 W. & M., when the churches are not more than two miles asunder. Under these statutes the numerous small parishes of many of the cathedral cities, as London, York, and Norwich, have been compressed into a less number of benefices. For Unions of Parishes, see p. 100.

USAGE differs from custom and prescription, inasmuch as a man may claim a rent, common, or other inheritance by prescription, but not by usage. 5 Rep. 65.

USE, at common law, was a beneficial enjoyment in land distinct from the ownership, and was an usufructuary interest in possessions, introduced from the civil law by the clergy to evade the prohibitions against mortmain. After trying sundry devices, such as purchasing lands of their own tenants, suffering recoveries, and buying lands round the church and making them churchyards, by bull from the Pope, they invented this way of conveying lands to others for their *own use*; and, this being a matter of equity, it met with a favourable construction from the judge of the chancery court, who, in those days, was mostly a priest. This mode of settlement extended to other classes during the civil wars of the

**Houses of York and Lancaster**, when the parties in these domestic broils, to secrete their possessions and transmit them to their issue, despite of attainders, began the *limitation of uses*, with power of revocation. The practice was interfered with, and limited by 27 H. 8, c. 10, by joining the possession to the use, or, as it is usually termed, transferring use into possession.

**USE AND OCCUPATION**. In cases where a house, &c., is not let by any deed or lease under seal, the proper remedy is an action on premises for use and occupation. It will not serve to try a *right* to premises, but is founded on a contract expressed or implied between plaintiff or defendant. Nor will the action lie where premises have been let for an illegal or immoral purpose, such as female prostitution. See *Lease and Release*.

**USES AND TRUSTS** are akin to each other; use being the profit of land upon a trust reposed in another, that he to whose use the trust is made shall take the profits. Uses apply only to lands of inheritance; the trust being a creature of equity, as just intimated, only attaches on the profits of personality. *Toulmin's Dict.*

**USHER**, a door-keeper; a subordinate officer in the courts of law.

**UTERINUS FRATER**, a brother by the mother's side.

**UXORIUM**, a mulct or fine paid for not marrying. *Little. Dict.*

## V.

**VACATION**, the time between the end of one term and the beginning of another, which commences the last day of every term as soon as the court rises. There is also a vacation in the *spiritualities*, from the death of the bishop or other spiritual person until the appointment of another.

**VAGABOND**, a wandering beggar or idle person who has no fixed place of abode. The Vagrant Act gives power to *any person whatever* to apprehend any person offending against the act (p. 457); or, as it is termed, committing an act of vagrancy.

**VALET** was anciently a name denoting young gentlemen of rank and family, but afterwards applied to those of lower degree, and is now used for a menial servant, more particularly occupied about the person of his employer.

**VALUABLE CONSIDERATION** is distinguished by Blackstone from a *good* consideration; the latter is a consideration of blood, or natural affection; the former is money, marriage, or the like, and is the equivalent given for the thing purchased or contracted for.

**VASSAL**, a feudal tenant or grantee of land. See *Bordars*.

**VENIRE FACIAS**, a judicial writ, awarded to the sheriff, to summon a jury of the neighbourhood to try the cause at issue.

**VENUE** is the place or county where an action is to be tried, and whence the jury is summoned for the trial. Some persons, as barristers and attorneys, are privileged to lay and keep the venue in Middlesex, or move it into that county, unless another defendant is joined with them. In actions of debt, assumpsit, trover, and the like, which may be laid in any county, the judges may alter the venue, if they believe there cannot be an impartial trial where the venue is laid. But, in criminal cases, by 21 Jac. 1, c. 4, all informations on penal statutes must be laid in the county where the offences are committed.

**VERDEROR**, an officer sworn to keep the assize of the queen's forest, and whose duty is to take care of the vert and venison.

**VERGERS**, officers carrying white wands in courts of justice or in cathedrals.

**VERT**, in the forest laws signifies everything which bears a green leaf that may cover a deer; it is sometimes taken for a grant by the king to cut green wood in the forest, 4 *Inst.* 327.

**VESTRY**, a place adjoining to a church, where the vestments of the minister are kept; also a meeting at such place to consult on the affairs of the church or parish. In general, if a parishioner be shut out of the vestry-room by the clerk of the vestry, and he make it appear that he has a right to come into the room, and to be present and vote in the vestry, action on the case lies as a remedy, *Mod. Ca. in L. & E.* 52, 354. By custom as well as statute, there may be *select vestries*, or a certain number of persons chosen to have the government of the parish, make rates, and audit the accounts of churchwardens. See p. 113.

**VICAR GENERAL**, an officer under the bishop having cognizance of spiritual matters, as correction of manners and the like, as the *official principal* has jurisdiction of temporal matters, as of wills and administrations: both officers are commonly united under the name of chancellor. *Burn's Dict.*

**VICTORIA**, lately the Port Philip district of Australia, but in 1850, by 13 & 14 V. c. 59, made a distinct government from New South Wales, with governor, council, and legislative council. Legislative council to be elected by natural born subjects of the queen, 21 years old, possessing a freehold of £100 clear value, and by £10 householders, or by those holding a licence to depasture land within the colony, and leaseholders of £10 annual value. Governor and legislative council empowered to make laws, and appropriate the entire revenues

arising from taxes, duties, and rates. Power is conferred on the district councils to make by-laws, &c. Salary of governor fixed at £2000. Victoria has recently become a scene of great interest from the discovery of extensive gold fields. See p. 583, or VICTORIA in the author's *Cabinet Gazetteer*.

**VI ET ARMIS** are words used in indictments to express the charge of a forcible and violent perpetration of any crime or trespass.

**VILL** or **VILLAGE**, is sometimes taken for a manor, and sometimes for a parish or part of it. But a *vill* is most commonly an outpart or hamlet of a parish, consisting of a few houses separated from it. A manor may consist of several villages, or one alone. Blackstone says, but the point is disputed by some, that vill, tithing, and town are of the same signification in law.

**VILLAIN** or **VILLEIN**, a man of servile condition, of which there were formerly two sorts: one *villain in gross*, who was immediately bound to the person of his lord and his heirs; the other, a *villain regardant*, who was bound to the land as belonging to or annexed to his lord's manor.

**VISITATION BOOKS**. These were compiled when visitations were regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath. They contain the pedigree and arms of the nobility and gentry of the kingdom, from the twenty-first year of Henry VIII. to the latter end of the seventeenth century, during which period the two provincial kings-at-arms, Clarencieux and Norroy, soon after their investiture in office, usually received a commission under the great seal authorising them to visit the several counties within their respective provinces, to "peruse and take knowledge, survey, and view, of all manner of arms, cognizances, crests, and other like devices, with the notes of the descents, pedigrees, and marriages, of all the nobility and gentry therein throughout contained: and also to reprove, control, and make infamous by proclamation, all such as shall unlawfully, and without just authority, usurp or take any name or title of honour or dignity, as esquire or gentleman," &c. From these visitations entries were afterwards made in the books kept at the College of Heralds.

**VIVA VOCE**, an examination by parol in open court.

**VIVUM VADIUM**, a living pledge, used in opposition to a mortgage or *dead pledge*, and is when a man borrows money and grants an estate to the lender to hold till the rents and profits repay the sum borrowed; in which case the pledge is said to be *living*; surviving to the borrower on the discharge of his debt.

**VOIRE DIRE**. When a witness is suspected of partiality, he may, before he is examined, be sworn upon a *voire dire*, that is,

to declare whether he shall gain or lose by the matter in controversy.

**VULGAR ERRORS**, erroneous notions prevalent among vulgar or ignorant people. It is a vulgar error that a funeral passing over private grounds creates a right of way. That it is lawful to arrest the dead body for debt. That first cousins may intermarry, but that second cousins may not; whereas they may both marry with each other. That persons born at sea have a right of settlement in Stepney parish. That a butcher cannot be sworn on a coroner's jury. That a lease for upwards of 99 years creates a freehold. That to disinherit a child, the sum of one shilling should be bequeathed. All these are popular errors, having no more validity in law than in reason.

## W.

**WAGE**, to give security or pledge for the performance of a specific act. *Wager of battle* is abolished by 59 G. 3, c. 46, and *wager of law* by 4 W. 4, c. 42. See *Appeal*.

**WAIVER**, the passing over or omitting to take advantage of any right or claim.

**WAPENTAKE**, the local term for hundred in the counties north of the Trent.

**WARD** has several significations. It ordinarily implies an infant under the protection of a guardian. The city of London is divided into *wards*, over each of which is an alderman, and a court pertains to each, called the *wardmote-court*. A forest is divided into wards, so is a prison. Lastly, the heir of the king's tenant that held *in capite*, was termed a ward during minority.

**WAREHOUSING OF GOODS**. For the encouraging of British shipping, by making certain ports and towns of the kingdom entrepôts for merchandize, the lords of the treasury are empowered to appoint warehousing or bonding-places; and the commissioners of customs, under the direction of the treasury, warehouses, or places of security in which goods may be deposited without payment of duty, until such time as it suits the owners to remove them, either for exportation or home consumption; the warehouse-keeper or importer giving bond for the payment of the duties on the withdrawal of the goods. Goods are to be so warehoused as to leave easy access to every package and parcel; if the occupier of the warehouse omit so to stow them he forfeits £5 for every omission, and is liable to pay the duties if he suffer them to be taken away without entry. Goods fraudulently concealed or removed, forfeited, and any importer or proprietor fraudulently getting access to the warehouse, except in presence of the proper officer, to forfeit £500. Goods entered to be warehoused, or re-warehoused, to be carried

to warehouse under authority and direction of officer of customs. Goods not so carried to be forfeited. Goods to be cleared either for home use or exportation within three years; ship stores within one; if not cleared, to be sold to defray rent and charges. The advantages of bonding-warehouses having been experienced, the privileges of such warehouses were conferred on Manchester by 7 & 8 V. c. 31, but no other inland town has obtained a similar concession.

**WARRANT**, an authority or precept under the hand and seal of a justice, directed to a constable or other proper officer, requiring him to apprehend some person, search for stolen goods, or the like. It may be issued in cases of treason, felony, praemunire, and breaches of the peace. As a warrant deprives a person of his liberty, a *summons* is the more suitable process in disputes on wages, and other minor charges. *Bench warrant* is a warrant issued for prompt execution by justices sitting on the bench, or in session.

**WARRANT OF ATTORNEY**, a power given by a client to his attorney to appear and plead for him, or to suffer judgment to pass against him by confessing the cause of action to be just. By 1 & 2 V. c. 110; s. 9, no warrant of attorney or cognovit is valid unless there be present an attorney on behalf of the party executing, expressly named by him and attending at his request, to inform him of its nature and effect before it is executed. The attorney to subscribe his name as witness to the execution.

**WASSAILE**, a festival song, formerly sung from door to door about the time of the Epiphany.

**WASSEL-BOWL**, a large silver cup or bowl, in which the Saxons, at their entertainments, drank a health to one another, in the phrase of *wass-heal*; that is, "Health be to you."

**WATER-BAILIFF**, an officer in port towns, employed in the examining of ships and goods.

**WATERCOURSE**, see **RIVERS**. The right of taking water out of the well or pond belonging to another person pertains to the class of incorporeal hereditaments, and may be derived either from a grant or licence from the original proprietor, or from prescription, which presumes such concession.

**WATERMEN** are those who have served a seven years' apprenticeship on the river Thames, by which they become entitled to their freedom. They form an incorporated company, regulated by the 7 & 8 G. 4, c. 75, and have their own by-laws. The name and place of abode of the owner of any craft for the conveyance of goods, and of every person who lets out a boat for hire, together with the number or name of the vessel, are registered at Watermen's Hall, where any information respecting them may be obtained. The Court of Aldermen determine the fares to be taken for the conveyance of passengers, and the company



is required to cause boards, containing a list of fares, to be erected at landing-places, and at the distance of half a mile from each other, on the banks of the river, under a penalty of £25. Defacing or damaging such boards is a misdemeanor, and persons informing thereof are entitled to a reward of £20, payable by the company. Watermen *demanding* or *taking* more than their fare, forfeit for every offence not exceeding 40s. Watermen are to have a printed copy of the fares in their boat, and refusing to produce the same to a passenger subjects to a penalty of £5. Wilfully avoiding a passenger; or not proceeding with a passenger to the place directed; or hindering any person from finding the name or number of the boat; or using abusive or scurrilous language, subjects to a penalty not exceeding £5. Complaint may be made any time within thirty days after the offence to the lord mayor, or any justice within his jurisdiction; and in all cases where a penalty is imposed, the matter may be determined by them, or the court of the Watermen's Company.

**WATER SUPPLY.** By the "Metropolis Water Act, 1852," the 15 & 16 V. c. 84, it is made unlawful after August 31, 1855, to supply the metropolis with water for domestic use (except the Chelsea Waterworks, to August 31, 1856), from any part of the river Thames below Teddington Lock, or from any part of the tributary streams of the Thames below the highest point where the tide flows in such tributary streams. From August 31, 1855, every reservoir within a distance in a straight line from Saint Paul's of not more than five miles, in which water for the supply of the domestic use of the metropolis is stored by any company, shall be roofed in or otherwise covered over; provided that this provision shall not extend to any reservoir the water from which is subjected by the company to efficient filtration after it is discharged from such reservoir, and before it is passed into the mains of the company for distribution, or to any reservoir the whole of the water from which is distributed through distinct mains for other than domestic purposes, nor to any reservoir whatever the water stored in which shall be used exclusively for other than domestic purposes. From December 31, 1855, no water to be brought within the metropolis for the purpose of domestic use otherwise than through pipes or through covered aqueducts, unless the same shall be afterwards filtered before distribution.

If complaint be made in writing by not less than twenty inhabitant householders to the Board of Trade as to the quantity and quality of the water supplied by any company, the Board may appoint a competent person to inquire respecting the same and report thereon, who is to give notice to the company, and have power to inspect their works, the penalty for obstructing him being £10. If the complaint be well founded the Board to

give notice to the company, who are then required to remove the grounds of complaint within a reasonable time. All steam-engines used by any company are to consume their own smoke. After the expiration of five years from the passing of this act, the district mains are to have a constant supply of pure and wholesome water sufficient for the domestic use of the inhabitants of all houses supplied by such company, at such pressure as will make the water reach the top story of the highest of such houses, but not exceeding the level prescribed by the special act of such company; provided that no company shall be bound to provide a constant supply of water to any district main until four-fifths of the owners or occupiers of the houses on such main shall, by writing, have required such company to provide such supply, nor even upon such requisition, in case it can be shown by any company objecting that more than one-fifth of the houses on such main are not supplied with pipes, cocks, cisterns, machinery, and arrangements of all kinds for the reception and distribution of water, constructed according to the regulations prescribed by the special act or by this act, or which any company, with the approval of the Board, may from time to time make in that behalf; and after any such requisition shall have been delivered to the company, the surveyor, or any other person acting under the authority of the company, between the hours of nine in the forenoon and four in the afternoon, may enter into any house on such district main, in order to ascertain whether the pipes, cocks, cisterns, and machinery of such house are so constructed; provided that any company may, with the consent of the Board of Trade, suspend the giving of such constant supply, or give the same in succession to the several districts of such company, or to any parts of such districts as may be found to be convenient; and provided that the company, after due notice, abstain from supplying, or to cut off the communication pipes, and withdraw the supply of water from any house whereof the pipes shall not be in conformity with such regulations; but neither the Kent Waterworks Company nor the Hampstead Waterworks Company is required to give such supply at any height exceeding 180 feet above Trinity high water mark; nor the East London Waterworks Company to give such supply at any height exceeding 40 feet above the level of the pavement nearest the point at which such supply shall be required. By s. 16 the penalty for not complying with these provisions is £200, and £100 for every month during which they are neglected. Every company is to keep a map of their underground works, which is to be open to inspection, and also to furnish particulars of any district main from which the person applying may be furnished. Cisterns to be supplied with proper ball-cocks, and with closets and baths, so constructed as to prevent waste, or return of impure water into the mains. Water may be cut off for neglect of regula-

tions. Parish officers, with consent of vestry, may require inhabitants to procure a supply of water, if it can be obtained at a cost not exceeding 3*d.* per week, s. 27. The ambit or circuit of the act extends to Fulham West, Poplar and Woolwich East, Wandsworth and Putney South, and to such parts of Chelsea as lie north of Kensington.

**WAY.** Right of way, is a right to a private road, or passage, through another man's ground.

**WAYS AND MEANS.** When the house of commons has voted a supply, and settled the amount, it is usual to resolve into a committee to consider the *ways and means* to raise the supply so voted.

**WEIGHERS,** a class of custom-house officers, whose duty is to attend and assist in the weighing of customable goods. They are divided into established, preferable, extra, and glut weighers. The established and preferable weighers only have the power of making seizures.

**WEIGHTS AND MEASURES.** By 5 G. 4, c. 74, amended by the 5 & 6 W. 4, c. 63, attempts have been made to enforce and establish uniformity in the weights and measures of the United Kingdom. By these statutes an imperial standard yard, pound, gallon, and bushel, are fixed, and the principle laid down on which they may be renewed, if lost or destroyed. Models and copies of these and their parts and multiples are to be deposited at the Chamberlain's office, Westminster, and sent to London, Edinburgh, Dublin, and other cities and places. The magistrates are to procure them for the use of their respective counties, and contracts are to be governed by these standards. The old wine gallon of 231 cubic inches; the ale and beer gallon of 282 inches, the old corn gallon of 268-8, the old Scots pint or Stirling jug, with all other local measures of capacity of every description, are abolished. The imperial standard gallon is 277-274 cubic inches, and the proportion it bears to the old wine gallon is nearly as 6 to 5, to the ale gallon, as 59 to 60, to the corn gallon, as 33 to 32, to the Stirling pint as 59 to 22. The *legal stone* is fixed at 14 lbs. avoirdupois, and the use of all others abolished. All articles sold by weight must be sold by avoirdupois weight, except gold, silver, platina, precious stones, and drugs in retail, which are to be sold by troy weight. Local and customary measures are abolished; also heaped measures; but articles heretofore sold by heap measure may either be sold by the bushel filled to the brim, or some aliquot part thereof, or by weight. *Coals* must be sold by weight only. Weights made of lead or pewter are not to be stamped or used.

The following fees are payable to inspectors under 5 & 6 W. 4:—

For examining, comparing, and stamping all *brass weights* :

Each half hundred weight . . . . . 0*s.* 9*d.*

Each quarter of a hundred weight . . . . . 0 6

Each stone . . . . .	Os. 4 <i>l</i> .
Each weight under a stone to a pound inclusive . . . . .	0 1
Each weight under a pound . . . . .	0 0½
Each set of weights of a pound and under . . . . .	0 2
For examining, comparing, and stamping all <i>iron weights</i> , or weights of other descriptions not made of brass :	
Each half hundred weight . . . . .	0 3
Each quarter of a hundred weight . . . . .	0 2
Each stone . . . . .	0 1
Each weight under a stone . . . . .	0 0½
Each set of weights of a pound and under . . . . .	0 2
For examining, comparing, and stamping all <i>wooden measures</i> :	
Each bushel . . . . .	0 3
Each half bushel . . . . .	0 2
Each peck, and all under . . . . .	0 1
Each yard . . . . .	0 0½
For examining, comparing, and stamping all <i>measures of capacity</i> of liquids, made of copper or other metal :	
Each five gallon . . . . .	1 0
Each four gallon . . . . .	0 9
Each three gallon . . . . .	0 6
Each two gallon . . . . .	0 4
Each gallon . . . . .	0 2
Each half gallon . . . . .	0 1
Each quart, and under . . . . .	0 0

The privileges of leet juries, and of local bodies in the metropolis, are not infringed. The 18 & 19 V. c. 72, makes provisions for legalizing and preserving the restored standards of weights and measures.

**WELSH MORTGAGE.** A mortgage in which no day is fixed for the repayment of the mortgage-money, but left to the mortgagor to take his own time, by which he enjoys a perpetual right of redemption.

**WERE.** Under the Anglo-Saxon laws the *were* was the legal value of a man's life, which varied according to his rank ; and if human life were made to vary in value, it is no wonder that personal estimation should vary in the same way ; thus the oath of a *twelvehynd man* was equal to the oath of six *ceorls*. Besides the were, there was a security afforded to the safety and peace of the house called the *mund*, and this, like the were, varied in amount with the rank of the party. Neither the *mildness* of the Anglo-Saxon laws, nor the principle of the were, seem to have extended to the case of *theft* ; from the time of Athelstan, larceny to the value of twelve pence was capital, and very severe punishments were inflicted still earlier for smaller offences.

**WHARF,** a convenient place for the landing, warehousing, and shipping of goods. Natural ground on the banks of a canal,

though used for the purpose of a wharf, is not a wharf: neither is the sea beach, *Rea v. Regent's Canal Company*. The term in its ordinary and legal import means a place built or constructed for the purpose of loading and unloading goods, and for the use of which wharfage or compensation is paid to the owner. *Sufferance wharfs* are certain privileged places, on which goods are permitted to be landed in the custody of the custom-house till such time as the duties are paid, or the goods bonded.

WHITE MEATS are milk, butter, cheese, eggs, and any compositions of them, which formerly were forbid in Lent, as well as flesh, until Henry VIII., by proclamation, A.D. 1543, allowed the eating of *white meats*.

WIDOW'S CHAMBER. A widow's apparel and the furniture of her bed-room is so called, and to which, by the custom of London, she is entitled on the death of her husband.

WIFE. The abduction, or taking a man's wife either by fraud and persuasion or open violence, is an offence for which a remedy may be had, either by writ of ravishment or action of trespass. The husband is also entitled to recover damages in an action on the case against such as *persuade or entice* his wife to live separate from him, without sufficient cause. The old law was so strict on this point, that if a man's wife missed her way on the road it was not lawful for another man to take her into his house, unless she were benighted, and in danger of being lost or drowned; but a stranger might carry her behind him on horseback to market, or to a justice of peace for a warrant against her husband, or to the spiritual court to sue for a divorce.

WILLS have been already treated of, but it may here be added as a matter of history in the law of property, that prior to the 32 H. 8, c. 7, there was no general testamentary power over freehold lands in England; but the power of willing personal property seems to have existed from the earliest period. Yet this power did not originally extend to the whole of a man's personal effects, but a man's goods, after paying his debts and funeral expenses, were devisable into three equal parts, one of which went to his children, another to his wife, and the third was at his own disposal. In Scotland, the right of bequest still continues restricted to personal property, not extending to inheritable or real property, which comprehends lands, tenements, fixtures, and what are termed "heirship movables." The Wills Act in England, 1 V. c. 26, has made all property devisable, real and personal. See p. 302.

WITENA-GEMOT, a convention or assembly of great men, in the Anglo-Saxon age, to advise and assist the king, and answerable to our parliament.

WOUNDING. To constitute a wound, there must be a separa-

tion of the whole skin ; a separation of the cuticle only is not sufficient, *Reg. v. M'Loughlin*, 8 C. & P. 635.

**WRIT**, in general, is the queen's precept in writing, under seal, issuing out of some court to the sheriff, or other person, and commanding something to be done touching a suit or action, or giving commission to have it done.

**WRIT OF RIGHT**, a judicial process to establish a claim to property against a possessory title, in which the defendant must allege some seisin of the lands and tenements to himself, or else in some person under whom he claims ; and then derive the right from the person so seised to himself. Except the case of *Toith v. Baywell*, in 1826, there are few examples in the last century of prosecuting any real action for land by *writ of right*, or otherwise than by action of *trespass* or *ejectment*, which are the usual modes of settling the title of lands.

## Y.

**YARD**, the British standard measure of length. The length of the imperial yard, as fixed by statute in 1824, is, compared with that of a pendulum vibrating seconds in the latitude of London, at 62° Fahrenheit, in a vacuum at the sea-level, in the proportion of 36 inches to 39.1393 inches.

**YEAR** is a well-known period of time, consisting of 365 days : for though, in bissextile, or leap-year, it consists of 366, yet, by 21 H. 3, the additional day in the leap-year, together with the preceding day, shall be accounted for one day only. With few exceptions, all Christian nations commence the year on the 1st of January ; but as recently as 1752, even in England, the year did not legally commence till the 25th of March. In Scotland, at that period, the year began on the first of January. This difference caused great practical inconvenience ; and January, February, and parts of March, often bore two dates, as is frequently found in old records, as 1711-12. These inconsistencies, however, are removed by 24 G. 2, c. 23, which discontinues the Julian calendar, and introduces the New Style, by enacting that the 1st of January shall be reckoned the first day of the year, throwing out eleven days in that year, from the 2nd of September to the 13th, with a saving of ancient customs. Both *half-years* and *quarters* are usually divided according to certain feasts and holidays, rather than a precise division of days ; as Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day. In these cases, such divisions of the year by the parties are regarded by the law, and, therefore, though a half-year's notice to quit is necessary to determine a tenancy from year to year, yet a notice served on the 29th of September, to quit on the 25th of March, being half a year's notice according to the

above division, is good, though it contains less than one hundred and eighty-two, namely, one hundred and seventy-eight days.

**YEAR AND A DAY.** A term that determines a right, or works a prescription in many legal cases; as in case of an estray, if the owner challenge it not within that time, it belongs to the lord; so of a wreck. A *year and a day* is given to prosecute appeals, and for actions in a writ of right, after entry or claim, to avoid a fine, and if a person wounded die in a year and a day, it makes the offender, in certain cases of homicide, guilty of murder.

**YEW** is derived from a Greek word "to hurt," and probably, before the invention of guns, our ancestors made bows with this wood, for the annoyance of their enemies; and, therefore, took care to plant the trees in church-yards, whereby they might be better seen and preserved by the people. *Blount.*

**YORK, custom of,** by which the widow of an intestate claimed one-third part of the effects of her deceased husband, after the payment of his debts.

**YULE,** in Scotland and the north of England, the term used by country people for Christmas. The author remembers the observance of the custom in Yorkshire, of laying a large log called a *yule* log, on the fire on Christmas-eve, to burn through the night.

## Z.

**ZEALAND, NEW.** A group of islands, consisting principally of two separated by Cook's Strait, and lying in the Pacific Ocean, 1200 miles S.E. from Australia. They have been made a British colony; and in 1852 a representative constitution was granted under the 15 & 16 V. c. 72, by which the colony is divided into the six provinces of Auckland, New Plymouth, Wellington, Nelson, Canterbury, and Otago, each having a provincial council, elected by £50 freeholders. See *New Zealand*, p. 583.

**ZYTHUM.** A drink made of corn, used by the ancient Gauls; so called from the seething or boiling it, whence cider had its name. *Cuvcl.*

## APPENDIX.

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### COSTS AND CHARGES IN THE COUNTY COURTS.

*(From the London Gazette, October 17, 1856.)*

A scale of Costs and Charges to be paid to Counsel and Attorneys in the County Courts, as well between Party and Party as between Attorney and Client. *Under the provisions of the 19 & 20 Vict. c. 108. (COUNTY COURTS, p. 374.)*

	£	s.	d.
Letter before suit . . . . .	0	3	0
Instruction to sue or defend . . . . .	0	5	0
Attendance and entering plaint, including particulars of demand and copies, such particulars and copies being signed by the attorney . . . . .	0	10	0
N.B.—The total amount of these items to be entered on the summons.			
Examining and taking minutes of the evidence of each witness, afterwards allowed by the judge . . . . .	0	3	0
Attending court and conducting cause, when no counsel employed . . . . .	1	10	0
Witnesses' expenses in conformity with rule . . . . .	0	3	0
Attending taxing costs . . . . .	0	3	0

#### *Occasional Costs.*

Attending to apply for summons out of the district . . . . .	0	4	0
N.B.—The amount of this item to be entered on the summons.			
If plaintiff abandon action and give notice thereof, attending sitting . . . . .	0	3	0
Notice to produce—notice to admit—notice for application for a new trial, or to set aside proceedings—including copies and duplicates original, and service—and notice of special defence and copies, including particulars and copies in case of set-off, and attending Registrar of court therewith, and such notices, particulars, and copies being signed by the attorney . . . . .	0	5	0



	£	s.	d.
Attending and inspecting documents . . . . .	0	5	0
Mileage for each mile to inspect documents, not exceeding twenty miles . . . . .	0	0	6
Preparing confession or agreement, under 13 & 14 V. c. 61, s. 8 or 9, where prepared by plaintiff's attorney, incidental attendances included . . . . .	0	7	0
All necessary affidavits, including filing; each . . . . .	0	5	0
Oath, sum paid.			
Attending to enter up judgment by default . . . . .	0	3	0
Attending court for an order to bring up a prisoner to give evidence . . . . .	0	4	0
Instructions for, and drawing and copying brief, in cases of counsel employed, including attendance on counsel . . . . .	2	0	0
Fee to counsel and clerk, not exceeding . . . . .	3	5	6
Attending court on trial with counsel . . . . .	0	10	0
Attending court to support or oppose motion for new trial to change venue, or set aside proceedings, when no counsel employed . . . . .	0	15	0
Attending with counsel in last-mentioned cases . . . . .	0	10	0
Fee to counsel and clerk . . . . .	1	3	6
Any attendance at the office of a Registrar, which he may upon taxation think was necessary . . . . .	0	3	0

### *New Trial.*

Costs to be allowed on the same scale as the original trial.

#### *Costs for the Day on adjournment of cause.*

Attorney for attending Court, when no counsel employed . . . . .	0	15	0
Attending with counsel . . . . .	0	10	0
Refresher fee to counsel and clerk . . . . .	1	3	6
Witnesses' expenses same as on trial.			

### *Arbitration.*

Attending reference, without counsel, for each sitting . . . . .	1	0	0
Attending reference, with counsel . . . . .	0	15	0
Fee to counsel and clerk for each sitting, not exceeding . . . . .	2	4	6
Witnesses' expenses same as on trial.			

*Note.*—Costs of counsel and attorney, or of an attorney attending on reference, shall not be allowed without the order of the Judge; nor shall the costs of more than one sitting be allowed without the order of the Judge.

*Costs in actions under 19 & 20 Vict. c. 108, s. 23.*

£ s. d.

Shall be taxed according to the scale used in the Court of Queen's Bench, so far as it is directly applicable; and, when it is not directly applicable, the principle of that scale shall be followed.

*Costs on Appeal.*

Preparing notice of appeal, including copies and service	0	5	0
Paying money into Court, as deposit on appeal, including notice and service thereof	0	3	0
Notice of Court to which appeal to be made	0	3	0
Preparing case, including copies	0	10	0
Attending Judge to sign, or to settle and sign case	0	3	0
Transmitting copies of case, including deposition of the same	0	3	0
Transmitting case and copies, including notice and service thereof	0	3	0
Application to Judge for leave to proceed on the judgment	0	5	0
Depositing order of Court of Appeal, including notice and service thereof	0	3	0

When a new trial takes place in pursuance of the direction of the Court of Appeal, the costs of such new trial shall be allowed on the same scale as in the case of a new trial granted by the Judge of a county court.

N.B.—The costs in every cause shall, upon the above scale, abide the event, unless the Judge shall make some special order with reference to such costs, or any part thereof.

In pursuance of the powers vested in us by the appointment of the Lord Chancellor, under 19 & 20 Vict. c. 108, we, John Herbert Koe, Edward Cooke, John Worledge, and William Furner, have framed the above scale of costs and charges.

I approve of this Scale, to come into operation in all County Courts, on the 1st day of November next.

CRANWORTH, C.

9th October, 1856.

## NISI PRIUS OFFICERS AND FEES.

In 1852, the 15 & 16 V. c. 78, provided for the permanent establishment of officers to perform the duties at Nisi Prius in the superior Courts of Common Law, and for the payment of



	£	s.	d.
Upon payment of money into court, viz.:			
For every sum under £50 . . . . .	0	5	0
£50 and under £100 . . . . .	0	10	0
£100 and above that sum . . . . .	1	0	0
Every certificate . . . . .	0	1	0
Office copies of præcipe, or other proceedings, per folio . . . . .	0	0	6
Every search, if not more than two terms . . . . .	0	0	6
exceeding two, and not more than four terms . . . . .	0	1	0
exceeding four terms, or a general search . . . . .	0	2	6
Every affidavit, affirmation, &c., taken before the master . . . . .	0	1	0
Filing every recognizance or security in ejectment or error . . . . .	0	2	6
Every allowance and justification of bail . . . . .	0	3	0
For taking special bail as a commissioner . . . . .	0	2	0
Filing affidavit, and inrolling articles previous to the admission of an attorney . . . . .	0	5	0
Every re-admission of an attorney . . . . .	0	5	0
All other fees than those above mentioned are hereby abolished, and are not to be taken by any person in the Master's offices, under any pretence whatever.			

*Offices of the Associates of the three Chief Judges.*

	£	s.	d.
Every record of nisi prius delivered to the associate to be entered for trial . . . . .	1	5	0
Every trial of a cause from plaintiff . . . . .	1	0	0
defendant . . . . .	0	15	0
If the trial continues more than one day, then for every other day, from plaintiff and defendant each . . . . .			
	0	10	0
Returning the postea . . . . .	0	5	0
Every cause made remanet, at the instance of the parties, to be paid by plaintiff or defendant, as the case may be . . . . .	0	10	0
Every cause withdrawn, to be paid by the party at whose instance it is withdrawn . . . . .	0	5	0
Re-entering every record of nisi prius, made remanet, &c. . . . .	0	2	0
Every reference, from plaintiff and defendant, each . . . . .	0	5	0
Every amendment of any proceeding whatever . . . . .	0	2	0
Every order or certificate . . . . .	0	5	0

	£	s.	d.
Every special case, or special verdict, in addition to the charge for ingrossing and copying, at the rate of 4d. per folio, from plaintiff and defendant, each	0	10	0
Attending any court or otherwise, with any record, or other proceeding, under writ of subpoena or special order of court, per day . . . . .	1	0	0
All other fees than those before mentioned are hereby abolished, and are not to be taken by any person in the Associates' offices under any pretence whatever.			

*Chambers of the Chief and Puisne Judges.*

	£	s.	d.
Every summons to try an issue before the sheriff . . . . .	0	1	0
Every other summons whatever, whether in term or vacation . . . . .	0	2	0
Every order to try an issue before the sheriff . . . . .	0	1	0
Every other order whatever of an ordinary nature . . . . .	0	2	0
Every order of a special nature, such as reference to arbitration, or attendance of witnesses at arbitration; service of process on person resident abroad; reference to the master to fix sum for final judgment; revival of judgment, and the like . . . . .	0	5	0
Every fiat, warrant, certificate, caveat, special case, special verdict, or the like . . . . .	0	5	0
Every affidavit, affirmation, &c., whether in term or vacation, each deponent . . . . .	0	1	0
Every affidavit kept for the purpose of being conveyed to the proper office to be filed . . . . .	0	1	0
Every proceeding filed . . . . .	0	2	0
Every admission of an attorney . . . . .	1	0	0
Every approbation of commissioners for taking affidavits or special bail . . . . .	0	2	6
Every commission for taking affidavits or special bail, exclusive of stamp duty, ingrossing, and sealing . . . . .	1	0	0
Every other commission for any purpose whatever, exclusive of stamp duty, ingrossing, and sealing . . . . .	0	10	0
Every acknowledgment by married women . . . . .	0	10	0
Office copies of judge's notes, or of any other proceeding whatever, per folio . . . . .	0	0	6
Every cognizance or bond of any description whatever . . . . .	0	10	0
Every allowance of writ of error . . . . .	0	10	0
Bail on cepi corpus, habeas corpus, error or ejectment . . . . .	0	2	0
Delivering bail piece off the file, or justification of bail . . . . .	0	2	0

	£	s.	d.
Every committal . . . . .	0	5	0
Every exhibit signed by judge . . . . .	0	1	0
Producing judge's notes . . . . .	0	5	0
Bill of exceptions signed by judge . . . . .	0	5	0
Order in legacy duty cases . . . . .	0	5	0
Crown revenue cases, from defendant . . . . .	0	5	0
Attendance in any court, or otherwise, under sub- poena or special order of court, to give evidence or produce documents, per day . . . . .	1	0	0
Attendance as a commissioner to take affidavit, &c., or at a judge's house, or elsewhere, at request of parties . . . . .	0	10	0
Appointment of commissioners under glebe exchange . . . . .	1	0	0
Allowance of bye-laws or table of fees . . . . .	1	0	0
Report on private bill . . . . .	5	0	0
Attendance by counsel, each side . . . . .	0	5	0

*Note.*—All plans, sections, &c., accompanying any order or office copy to be paid for by the party, according to the actual cost.

In cases where the party has been allowed to sue *in forma pauperis*, the fees are not to be demanded or taken, nor in cases where such fees would be payable by any Revenue or other Government Department.

All other fees than those before mentioned are hereby abolished, and are not to be taken by any person at the Judge's chambers under any pretence whatever.

Given under our hands, at the Treasury Chambers, Whitehall, this Twentieth day of November, 1852.

CHANDOS, } Two of the Commissioners of  
THOS. BATESON. } Her Majesty's Treasury.

The before-mentioned Table of Fees having been sanctioned and allowed by the Lord Chief Justices, the Lord Chief Baron, and other Judges, as required by the said Act, we do hereby order that the said Table of Fees be inserted and published in the *London Gazette*.

Treasury Chambers, November 22, 1852.

CHANDOS, } Two of the Commissioners of  
THOS. BATESON. } Her Majesty's Treasury.

## Table of Costs.

SETTLED BY THE JUDGES, IN HILARY TERM, 1853, BEING THE GENERAL ALLOWANCE FOR PLAINTIFFS AND DEFENDANTS, AND, IN CASES UNDER TWENTY POUNDS, AS WELL BETWEEN ATTORNEY AND CLIENT AS BETWEEN PARTY AND PARTY.

*Writs.*

	Above £20.			Under £20.		
	£	s.	d.	£	s.	d.
Summons . . . . .	0	12	6	0	10	0
Concurrent summons . . . . .	0	10	0	0	7	6
Renewed summons . . . . .	0	10	0	0	7	6
Capias . . . . .	0	12	6			
Alias . . . . .	0	10	0			
Pluries . . . . .	0	10	0			
Capias ad satisfaciendum . . . . .	0	12	0	0	11	0
Renewed capias ad satisfaciendum . . . . .	0	9	6	0	8	6
Capias ad satisfaciendum for the residue . . . . .	0	14	0	0	13	0
Renewed . . . . .	0	11	6	0	10	6
Fieri facias . . . . .	0	12	0	0	11	0
Renewed . . . . .	0	9	6	0	8	6
Renewed for the residue . . . . .	0	14	0	0	13	0
Renewed . . . . .	0	11	6	0	10	6
Fieri facias de bonis ecclesiasticis . . . . .	0	14	6			
Renewed . . . . .	0	12	0			
Habere facias possessionem and fieri facias, or capias ad satisfaciendum for costs in one writ . . . . .	0	18	0			
Habere facias possessionem alone . . . . .	0	15	0			
Special endorsements on writs of summons . . . . .	0	5	0	0	2	6
Writ of revivor . . . . .	0	12	6	0	10	0
Ejectment . . . . .	0	15	0			
Of trial, exclusive of fee . . . . .	...			0	8	0
Subpoena ad testificandum . . . . .	0	7	0	0	5	0
Subpoena duces tecum . . . . .	0	9	0	0	7	0
If above 4 folios, additional per folio . . . . .	0	0	8	0	0	4
Exigi facias . . . . .	1	1	0			
Capias utlagatum . . . . .	1	1	0			
Elegit, Nos. 9, 10, and 11, in new rules . . . . .	0	15	0			
—12, 13, and 14 . . . . .	1	0	0			
Attachment . . . . .	0	12	0			
Detainer . . . . .	0	12	6			
Habeas corpus, obtained by plaintiff, including allowance . . . . .	1	0	0			
Procedendo . . . . .	0	15	0			
Venditioni exponas . . . . .	0	13	6			
Supersedeas, if not issued by a prisoner . . . . .	0	11	0			

*Copy and Service of Writs.*

	Above £20. £ s. d.			Under £20 £ s. d.		
Of summons, the defendant being served in London, Middlesex, or Surrey, within two miles of the place of business of the attorney, for each defendant . . .	0	5	0	0	5	0
If beyond that distance, additional for every mile, but in cases under £20 not to exceed ten miles . . .	0	1	0	0	0	6
If the defendant should be served in any other county the same allowance, but the distance to be calculated from the office of the attorney employed to effect service.						
Of writ of revivor, the same as summons						
Of writ of ejectment, the same as of writ of summons, for each defendant . . .	0	0	4			
And in addition for every folio of copy beyond three . . .						
Correspondent's charges for service of writ, including affidavit of service, and exclusive of mileage, in cases in which the fixed sum for costs does not apply . . .	0	18	0	0	12	0
The like, for service of subpoenas . . .	0	8	6	0	5	0
Extra for subpoenas duces tecum . . .	0	2	0	0	2	0
Notice of writ for service on a foreigner out of jurisdiction . . .	0	3	0	0	3	0
Agent's charges, according to circumstances, &c.						
In cases in which the defendant shall avoid service, and an order shall be made to proceed, a sum will be allowed for attendances to serve, according to circumstances.						
Of subpoena ad testificandum . . .	0	5	0	0	3	0
Of subpoena duces tecum . . .	0	7	0	0	5	0

*Instructions.*

Instructions to sue or defend, for pleadings, special affidavits, where allowed, and to counsel on special matters . . .	0	6	8	0	3	4
To counsel in common matters . . .	0	3	4	0	3	4
For brief . . .	0	13	4	0	6	8
If difficult, and many witnesses or documents, discretionary . . .	...			nil.		
For every suggestion . . .	0	6	8	0	3	4



	Above £20.			Under £20.		
	£	s.	d.	£	s.	d.
For plea of suggestion . . . . .	0	6	8	0	3	4
For issue in fact by consent . . . . .	0	13	4	0	6	8
For suggestion to revive or writ of revivor, when no rule necessary . . . . .	0	6	8	0	3	4
For rule for writ of revivor when neces- sary . . . . .	0	6	8	0	3	4
For proceeding in error . . . . .	0	6	8			
To defend for executor, after suggestion of death of original defendant . . . . .	0	6	8	0	3	4
For agreement of damages . . . . .	0	6	8	0	3	4
For grounds of error . . . . .	0	6	8			
For assignment of errors after notice . . . . .	0	6	8			
For confession of action in ejectment as to the whole or in part . . . . .	0	6	8			
To reduce jury . . . . .	0	13	4			

*Drawing, Pleadings, &c.*

Declaration, inclusive of instructions and ingrossing, and of attendance to file or deliver . . . . .	1	5	0	0	10	0
If above ten folios, for every folio . . . . .	0	1	0	0	1	0
One or more pleas, if three folios or under, exclusive of instructions, but inclusive of ingrossing . . . . .	0	4	0	0	3	0
If above three folios, for every folio draw- ing . . . . .	0	1	0	0	1	0
Joinder of issue, inclusive of ingrossing . . . . .	0	4	0	0	3	0
Demurrer, inclusive of ingrossing . . . . .	0	4	0	0	3	0
Joinder in demurrer, inclusive of ingross- ing . . . . .	0	4	0	0	3	0
Marginal statement of matter of law for argument, exclusive of copies for the judges . . . . .	0	6	8	0	3	4
Replications, new assignments, grounds of error, assignment of errors, pleas to assignment of errors, and other plead- ings, the same as the foregoing; charges for pleas . . . . .						
Issue or demurrer book . . . . .	0	6	8	0	3	4
Record . . . . .		nil.			nil.	
Postea, when drawn by attorney, includ- ing ingrossing, for every folio . . . . .	0	1	0	0	1	0
Judgment, whether by default or final . . . . .	0	3	4	0	3	4
Authority to receive monies out of court . . . . .	0	3	0	0	2	0

	Above £20. £. s. d.			Under £20. £. s. d.		
Suggestions, pleas to suggestions, and subsequent pleadings, of three folios or under, inclusive of ingrossment . . .	0	4	0	0	3	0
If above three folios, for every folio drawing . . . . .	0	1	0	0	1	0
Issue for the trial of facts by agreement, for every folio . . . . .	0	1	0	0	1	0
Special case, per folio . . . . .	0	1	0	0	1	0
Agreement of damages and copy, if five folios or under . . . . .	0	6	8	0	3	4
Above five folios, for every folio drawing . . . . .	0	1	0	0	1	0
And copy per folio . . . . .	0	0	4	0	0	4
Drawing writ of inquiry . . . . .	0	3	4	<i>nil.</i>		
Special particulars of demand or set-off, and copy, per folio . . . . .	0	0	8	0	0	4
Short ditto, and copy . . . . .	0	5	0	0	2	6
Abstract of pleas, when necessary, and fair copy, and copy for judge . . . . .	0	5	4	0	3	4
Bill of costs and copy for taxation, per folio . . . . .	0	0	8			
Copy for the opposite party . . . . .	0	0	4			
Drawing bill of costs and copy, per folio 4 <i>d.</i> , not to exceed . . . . .	...			0	4	0
Copy for the opposite party, per folio 4 <i>d.</i> , not to exceed . . . . .	...			0	4	0
Drawing and ingrossing common cognovit, and attendance thereon . . . . .	0	13	4	0	6	8
If special and long . . . . .	1	0	0	0	10	0
Replication, accepting money out of Court in full of demand, inclusive of instructions . . . . .	0	4	0	0	3	0
Similiter, or joindure of issue, to obtain order to try before sheriff . . . . .	...			0	3	0

*Ingrossing and Copying.*

Declarations, above ten folios, per folio . . . . .	0	0	4	0	0	4
Other pleadings before enumerated, above three folios, per folio . . . . .	0	0	4	0	0	4
Issue (pleadings), if fifteen folios or under . . . . .	0	5	0			
If above fifteen folios, for every folio . . . . .	0	0	4	0	0	4
Issue (pleadings), if ten folios or under . . . . .	...			0	3	4
Above ten folios, per folio . . . . .	...			0	0	4
All proceedings on paper, per folio . . . . .	0	0	4	0	0	4
The like on parchment, per folio . . . . .	0	0	6	0	0	4

Above £20.			Under £20.		
£	s.	d.	£	s.	d.

Judgments for non-appearance on specially endorsed writs, or writs of revivor, and in ejectment, to be taken as nine folios, including the writ, in actions above £20, and six folios under £20.

The allowance of £1 3s. 2d. for interlocutory judgments will be discontinued, and the drawing, entry, and other charges will for the future be according to this scale.

The length of interlocutory and final judgments will be allowed as heretofore.

### Notices.

To declare, reply, and subsequent pleadings, copy and service . . . . .	0	4	0	0	3	0
By defendant to bring issue to trial, copy and service . . . . .	0	4	0	0	3	0
For special jury, to opposite attorney, copy and service, pursuant to section 109 . . . . .	0	5	0	0	3	0
The like, to sheriff, pursuant to s. 112 . . . . .	0	5	0	0	3	0
To executor or administrator of sole defendant deceased, to appear to writ and suggestion . . . . .	0	5	0	0	3	0
To sheriff, of renewal of execution, exclusive of any payment . . . . .	0	5	0	0	3	0
To plaintiff in error, to assign errors . . . . .	0	5	0	0	3	0
Of discontinuance of error . . . . .	0	4	0	0	3	0
Of confession of error . . . . .	0	4	0	0	3	0
Of plaintiff's in error intention to proceed, to personal representatives of defendant, deceased . . . . .	0	5	0	0	3	0
Of appearance, when appearance duly entered, and notice given on the day of appearance, but not otherwise . . . . .	0	4	0	0	3	0
Of appearance to writ of revivor . . . . .	0	5	0	0	3	0
To plead . . . . .	0	4	0	0	3	0
Of declaration, when necessary, copy and service . . . . .	0	5	0	0	5	0
Of objection for misjoinder or nonjoinder of plaintiff, copy and service . . . . .	0	4	0	0	3	0
To sheriff, to discharge a prisoner out of custody, copy and service . . . . .	0	5	0	0	4	0

Above £20. Under £20.  
£ s. d. £ s. d.

Notice in ejectment, to defend for part of premises, and service . . . . .	0	6	0			
If above three folios, for every folio additional . . . . .	0	1	0			
Notice of admission of right and denial of ouster, by a joint tenant, &c. . . . .	0	6	0			
If above three folios, for every folio . . . . .	0	0	4			
Discontinuance by claimant in ejectment, and service . . . . .	0	5	0			
Of confession of action of ejectment as to the whole or in part, and service . . . . .	0	10	0			
Of trial, inquiry, demand of residence of plaintiff, of authority for issuing writ, and all other common notices . . . . .	0	4	0	0	3	0
To admit or produce, if short . . . . .	0	7	6	0	5	0
The like, if long . . . . .	0	10	0	0	5	0
If very long and special, a larger allowance may be made in cases above £20.						
Additional allowance for mileage as upon the service of a writ.						

*Copy and Service.*

Of special and common rules . . . . .	0	5	0	0	4	0
Of special rule above three folios, per folio additional . . . . .	0	0	4	0	0	4
Of summons or order of a judge . . . . .	0	3	0	0	3	0
Of order to charge a prisoner in execution . . . . .	0	5	0			
Of Master's note of receipt and of affidavits in error in fact . . . . .	0	7	0			
Of Master's note of receipt in error in law . . . . .	0	5	0			
Mileage on services, as upon a writ of summons.						

*Ejectment.*

\*

Instructions to sur. and examining deeds . . . . .	0	13	4
If a question of title . . . . .	1	1	0

*Attendances.*

To search for appearance to writ of summons . . . . .	0	3	4	0	3	4
Two searches will be allowed if necessarily made.						

	Above £20.			Under £20.		
	£	s.	d.	£	s.	d.
To obtain undertaking to appear to process	0	5	0	0	5	0
To give undertaking to appear	0	5	0	0	5	0
Deponent to be sworn (where allowed), for rules where no attendance in Court, to enter exception to bail, to leave writ at sheriff's office, to obtain return to writ, to alter or amend pleadings, to file any proceeding, to obtain office copies, consent to any summons, for postea (if necessary), to set down case, or demurrer, each judge with demurrer book or special case, to deliver points to each judge, to ascertain if books delivered, and other like attendances	0	3	4	0	3	4
To set down cause for trial	0	6	8	0	6	8
On each counsel with brief at trial, fee under 20 guineas, to reduce special jury, summons before a judge, and to pay money into Court	0	6	8	0	3	4
On counsel with brief fee 20 guineas and above	0	13	4			
To receive money out of Court	0	10	0	0	6	8
Council with brief, on motion, if above one guinea fee	0	6	8	0	3	4
If one guinea only	0	3	4	0	3	4
Consultation with counsel	0	13	4	<i>nil.</i>		
Conference with counsel	0	6	8			
Fee on every record or writ of trial	0	6	8	0	3	4
For common jury panel	0	3	4	0	3	4
For special jury panel	0	6	8	0	3	4
To obtain names of viewers	0	6	8	0	3	4
To enter any suggestion on roll when necessary.	0	3	4	0	3	4
Attending Court, cause made a remanet.	0	13	4	0	6	8
Attending for fresh panels after remanet, as before.						
Attendances incidental to agreement of amount of damages, according to the circumstances.						
Attendance in pursuance of notice to admit	0	6	8	0	3	4
For every hour beyond one	0	6	8	0	3	4
Attending making admissions, except under special circumstances	0	6	8	0	3	4
On reference to Master upon common						

	Above £20.			Under £20.		
	£	s.	d.	£	s.	d.
matters, such as to compute upon a bill or bond . . . . .	0	6	8	0	6	8
Special matters . . . . .	0	13	4	0	6	8
For every hour after the first . . . . .	0	6	8	0	3	4
If counsel in attendance, attorney attending . . . . .	0	6	8	0	3	4
Above one hour . . . . .	0	13	4	0	6	8
To attest confession in ejectment . . . . .	0	6	8			
To file memorandum of error, and obtain Master's receipt . . . . .	0	6	8	0	3	4
Assizes, each day, exclusive of expenses, but inclusive of all matters transacted, except one attendance upon each counsel with brief . . . . .	2	2	0			
Expenses, exclusive of travelling, for each day . . . . .	1	1	0			
Travelling expenses, the amount actually and reasonably paid, but in no case exceeding 1s. per mile one way						
If two causes, in each, per day, for attendance . . . . .	1	11	6			
If three causes or more, each . . . . .	1	1	0			
If more than one cause, expenses at 4l 1s. each day, and travelling expenses to be divided equally.						
Clerk's attendance, discretionary, if more than one cause, or on special cases, not exceeding per day, inclusive of expenses, except travelling . . . . .	1	1	0			
In assize towns, in which two lists are made, and in special jury causes, the attendance of the attorney will not be allowed from the commission day, but only from such period as his attendance became proper.						
On writ of inquiry, or writ of trial at a distance, if no other business, inclusive of expenses, per day . . . . .	2	2	0	1	1	0
If two cases, each . . . . .	1	11	6	0	13	4
If more than two cases, each . . . . .	1	1	0	0	13	4
Travelling expenses as before, and to be apportioned if more than one cause.						
In London or Middlesex, or in same town, on trial or writ of inquiry, when cause in paper and not tried, per day . . . . .	0	13	4	0	6	8

	Above £20.			Under £20.				
	£	s.	d.	£	s.	d.		
On trial . . . . .	1	1	0	0	13	4		
Ditto, if occupied the whole day . . . . .	2	2	0					
Managing clerk to conduct cause at a distance, when only one cause, per day . . . . .	1	11	6	0	13	4		
If more than one cause, each . . . . .	1	1	0	0	10	6		
Travelling and other expenses, the same as attorney.								
Court, on motion, rule nisi granted . . . . .	0	6	8	0	3	4		
The like, on rule absolute, after rule nisi . . . . .	0	13	4	0	6	8		
The like, previous to argument, per day . . . . .	0	6	8	0	3	4		
The like, in cases set down in the paper, not exceeding, for a whole term . . . . .	2	0	0	1	0	0		
After term, when sittings, not exceeding . . . . .	1	0	0	0	10	0		
Taxation on postea . . . . .	{	0	13	4	0	3	4	
		to		to				
	{	1	0	0	0	6	8	
More, according to time occupied.								
Ditto, costs of cause, otherwise than on postea . . . . .	{	0	6	8	{	0	3	4
		to						
	{	0	13	4	{			
Ditto, costs of judgment only, and ordinary interlocutory matters . . . . .		0	3	4		0	3	4

*Briefs.*

Minutes of Evidence . . . . .	...			0	13	4
Brief, and one fair copy where cause tried, before a judge of a court of record, where attorneys are not allowed to act as advocates, not exceeding . . . . .	...			2	0	0
In the like case, fee to counsel and clerk . . . . .	...			1	3	6
For drawing, per folio . . . . .	0	1	0			
Copying . . . . .	0	0	4			

*Term Fees, Letters, &c.*

Proper business . . . . .	0	13	0	0	10	0
Agency . . . . .	0	15	0	0	12	0
Letters, when no term fee proper business . . . . .	0	3	0	0	2	0
Agency . . . . .	0	5	0	0	3	0
Letters, in interlocutory matters proper . . . . .	0	2	0			
Agency . . . . .	0	3	0			
In actions under £20 no allowance will be made for letters for the vacation preceding the term in which a term fee shall be allowed.						
Letter before action, and other letters . . . . .	0	3	6	0	2	0

	Above £20.			Under £20.		
	£	s.	d.	£	s.	d.
Circular letters, after the first . . . . .	0	1	6	0	1	0
Drawing special affidavits, per folio . . . . .	0	1	0	0	1	0
Ingrossing same, exclusive of affidavits of increase . . . . .	0	0	4	<i>nil.</i>		
Common affidavits of five folios or under, including ingrossing and oath . . . . .	0	6	0	0	5	0
Affidavit of increase, including ingrossing and oath . . . . .	...			0	5	0
Copy for the other side . . . . .	...			0	2	0
All common searches, exclusive of payment . . . . .	0	3	4	0	3	4
If very long . . . . .	0	13	4	0	6	8
To attend reference to Master, not exceeding, except on examination of witnesses . . . . .	2	2	0	<i>nil.</i>		
To settle special endorsement on writ . . . . .	<i>nil.</i>			<i>nil.</i>		
Costs of signing judgment . . . . .	3	10	0			

*Defendants.*

Appearance . . . . .	0	7	0	0	6	0
For each additional defendant, inclusive of payment . . . . .	0	1	6	0	1	6
A second summons and order for time to plead shall be allowed in special cases above £20 when necessary.						

*Counsel's Clerk's Fees.*

The fees to be allowed to counsel's clerk not to exceed as under—

Upon a fee under 5 guineas . . . . .	0	2	6
5 guineas and under 10 guineas . . . . .	0	5	0
10 guineas and under 20 guineas . . . . .	0	10	0
20 guineas and under 30 guineas . . . . .	0	15	0
30 guineas and under 50 guineas . . . . .	1	0	0
50 guineas and upwards . . . . .	{ 2 10 0		
	t percent.		

*On Consultations.*

Senior's clerk . . . . .	0	7	6
Junior's clerk . . . . .	0	2	6
On general retainer . . . . .	0	10	6
On common retainer . . . . .	0	2	6
On conference . . . . .	0	5	6



## ALLOWANCES TO WITNESSES.

	If resident in the town in which the cause is tried.			If resident at a distance from the place of trial.		
	£	s.	d.	£	s.	d.
Common witnesses, such as labourers, journeymen, &c., per diem . . . . .	0	5	0	0	5	0
Master tradesmen, yeomen, and farmers, per diem, from . . . . .	0	7	6	0	7	6
	0	10	0	0	10	0
Auctioneers and accountants, per diem . . . . .	0	10	6	0	10	6
Professional men, per diem . . . . .	1	1	0	1	1	0
Ditto, inclusive of all except travelling expenses, per diem . . . . .	1	1	0	2	2	0
	...			3	3	0
Attorneys' or other clerks, per diem . . . . .	0	10	6	0	15	0
				1	1	0
Engineers and surveyors, per diem . . . . .	1	1	0	1	1	0
Notaries, per diem . . . . .	1	1	0	3	3	0
	1	1	0	1	1	0
Gentlemen . . . . .	with subpoena; but no daily allowance, except after the first day, and then a reasonable sum for refreshment and conveyance.			1	1	0
Esquires . . . . .				per		
Bankers . . . . .				diem.		
Merchants . . . . .						
Females, according to station in life, per diem, from . . . . .	0	5	0	0	5	0
	to			to		
	0	10	0	1	0	0
Police Inspector, per diem . . . . .	0	5	0	0	7	6
				to		
				0	10	0
Police constable . . . . .	0	3	0	0	5	0
				to		
				0	7	6

If the witnesses attend in one cause only, they will be entitled to the full allowance. If they attend in more than one cause, they will be entitled to a proportionate part in each cause only. The travelling expenses of witnesses to be allowed ac-

cording to the sums reasonably and actually paid, but in no case to exceed 1s. per mile one way.

*Miscellaneous.*

Close copy of proceedings in agency cases, 4d. per folio, according to actual length. In cases under £20 no allowance will be made in respect of the following matters, namely, attending deponent to be sworn to affidavit, advice on evidence, maps, plans, or models. For maps or plans, when used in cases above £20, from £1 1s. to £3 3s.

All other allowances will be made as heretofore, except so far as it may be necessary to reduce or increase the same, conformably to the scale of fees published on the 24th November, 1852.

(Signed) CAMPBELL, J. JERVIN, FRED. POLLOCK,  
E. H. ALDERSON, W. WIGHTMAN,  
T. J. PLATT, W. ERLE, T. N.  
TALFOURD, SAM. MARTIN.

*Dated 27th January, 1853.*

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RULES UNDER THE PATENT ACT FOR INVENTIONS.

(15 & 16 V. c. 83, *p.* 188.)

WHEREAS a commodious office is forthwith intended to be provided by the Crown as the Great Seal Patent Office, and the Commissioners of Her Majesty's Treasury have, under the powers of the said act, appointed such office as the office also for the purposes of the said act.

All petitions for the grant of letters patent, and all declarations and provisional specifications, shall be left at the said Commissioners' office, and shall be respectively written upon sheets of paper of twelve inches in length by eight inches and a half in breadth, leaving a margin of one inch and a half on each side of each page, in order that they may be bound in the books to be kept in the said office.

The drawings accompanying provisional specifications shall be made upon a sheet or sheets of parchment, paper, or cloth, each of the size of twelve inches in length by eight inches and a half in breadth, or of the size of twelve inches in breadth by seventeen inches in length, leaving a margin of one inch on every side of each sheet.

Every provisional protection of an invention allowed by the law officer shall be forthwith advertised in the *London Gazette*,

and the advertisement shall set forth the name and address of the petitioner, the title of his invention, and the date of the application.

Every invention protected by reason of the deposit of a complete specification shall be forthwith advertised in the *London Gazette*, and the advertisement shall set forth the name and address of the petitioner, the title of the invention, the date of the application, and that a complete specification has been deposited.

Where a petitioner applying for letters patent after provisional protection, or after deposit of a complete specification, shall give notice in writing at the office of the Commissioners of his intention to proceed with his application for letters patent, the same shall forthwith be advertised in the *London Gazette*, and the advertisement shall set forth the name and address of the petitioner, and the title of his invention; and that any persons having an interest in opposing such application are to be at liberty to leave particulars in writing of their objections to the said application at the office of the Commissioners within twenty-one days after the date of the *Gazette* in which such notice is issued.

The Lord Chancellor having appointed the Great Seal Patent Office to be the office of the Court of Chancery, for the filing of specifications, the said Great Seal Patent Office and the office of the Commissioners shall be combined; and the clerk of the patents for the time being shall be the clerk of the Commissioners for the purposes of the act.

The office shall be open to the public every day, Christmas-day and Good Friday excepted, from ten to four o'clock.

The charge for office or other copies of documents in the office of the Commissioners shall be at the rate of twopence for every ninety words.

(Signed)

ST. LEONARDS, C.  
JOHN BOMILLY, M.R.  
FRED. THESIGER, A.G.  
FITZROY KELLY, S.G.

*Dated, Oct. 1, 1852.*

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Ordered—That there shall be paid to the law officers and to their clerks the following fees :—

By the person opposing a grant of letters patent.

To the law officer . . . . .	£2 12 6
To his clerk . . . . .	0 12 6
To his clerk for summons . . . . .	0 5 0

By the petitioner on the hearing of the case of opposition.

To the law officer . . . . .	£2 12 6
To his clerk . . . . .	0 12 6
To his clerk for summons . . . . .	0 5 0

By the petitioner for the hearing, previous to the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification.

To the law officer . . . . .	£2 12 6
To his clerk . . . . .	0 12 6

By the person opposing the allowance of such disclaimer or memorandum of alteration, on the hearing of the case of opposition.

To the law officer . . . . .	£2 12 6
To his clerk . . . . .	0 12 6

By the petitioner for the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification.

To the law officer . . . . .	£3 3 0
To his clerk . . . . .	0 12 6

(Signed)

ST. LEONARDS, C.

*Dated October 1, 1852.*



# SUPPLEMENT.

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## ACTS OF THE SESSIONS, 1857.

### NEW COURT OF PROBATE AND LAW OF WILLS.

By 20 & 21 V. c. 77, the powers exercised by the Prerogative Court (p. 38) of Canterbury, and all other ecclesiastical courts, peculiar and manorial, in the granting of probates of wills and letters of administration, are abolished and transferred to the new Court of Probate, to be opened on or after January 1, 1858, as fixed by order in council made one month previously. Her Majesty to appoint a judge of the court, being an advocate of ten years', or a barrister of fifteen years' standing; tenure of office to be same as that of the judges of the superior courts, with like rank and precedence as the puisne judges. Judge of the Probate Court to be also judge of the Admiralty Court on the next vacancy with a salary for both of £5000. Court of Probate to sit and have its principal registry in London or Middlesex; subject to the Court, District Registries to be established in the cities and towns specified in the Act. Registrar of the court, and the district registrars, to be advocates, barristers, solicitors, or attorneys, unless already practitioners in an ecclesiastical court. Registrars, officers, and clerks to execute their offices in person, not by deputy; nor must they practise, or participate in the fees of any person practising, s. 22.

In testamentary matters court may examine witnesses on oath or affirmation, receive affidavits, and require production of any deed or writing, party disobeying liable to a fine not exceeding £100. Orders may be enforced with like power for the punishment of contempt as exercised by the Court of Chancery. Registrars may administer oaths. Forging the seal of the Court, or the signature of a registrar, or of a commissioner for taking oaths, a felony, liable to penal servitude for life, or shorter term, s. 28.

Rules and orders to be made by the Lord Chancellor and judges to determine the practice and procedure of the court. Practice to be same as the Prerogative Court, or as fixed by the rules, s. 30. Witnesses, and, if necessary, parties to be examined orally, by or before the judge in open court, or parties may verify in whole or part by affidavit; witnesses subject to cross-examination; witnesses may be examined abroad. Rules of evidence in the common law courts to be observed; common

law judges, upon request of probate judge, may sit in Court of Probate. Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a superior court of law, in either case, at the instance of the heir-at-law; or in any case with mutual concurrence of parties. Power of the court, duties and liabilities of jurors, and right of challenging in suitors same as in ordinary jury trials. Any person considering himself aggrieved by any decree of the Court of Probate may, with leave of the court, appeal to the House of Lords, s. 31, 39.

By s. 40, advocates, barristers, and serjeants-at-law to have rank and precedence as before in the Judicial Committee of Privy Council. Persons who have been admitted advocates may practise in any court of common law or equity. Proctors of Doctors Commons may, on application within a year, practise in Probate Court. Registrars and proctors may practise as solicitors in Court of Chancery. By s. 45, all solicitors and attorneys may practise in Court of Probate, subject to the laws in force concerning them.

*District Registries.*—By s. 46, probate of a will or letters of administration may be applied for to the district registry, and granted in common form, for control of personal estate, by the registrar, if upon affidavit of one or more of the applicants it appear the testator or intestate had at the time of death a fixed place of abode within the district. Such grant final, and not void from the deceased not having a fixed abode in the district. District registrar not empowered to grant probate or administration when there is contention till after contention is terminated by a decree. District registrars to transmit notice by next post to the principal registrar of application for probate or administration, with name of testator or intestate, time of death, and place of abode, and name of applicant, with any other particulars directed by rules and orders. Probate or administration not to be granted till after receiving a certificate from the principal registry. In case of doubt as to grant, district registrar to take the direction of the judge of the court, s. 50. Lists of probates and of administration, and copies of wills to be transmitted to the principal registry. District registrar to file and preserve all original wills of which probate or administration have been granted, in the public registry of the district. Caveats against the grant of probate or administration may be lodged in the principal registry or the district registry, s. 53.

*County Court Jurisdiction.*—By s. 54, if it appear by affidavit of the party applying for probate or administration to a district registry, that the personal property of the deceased was, exclusive of debts due, under the value of £200, and that the real estate to which deceased was beneficially entitled was under the value of £300, the county court of the place in which the

deceased died shall have the jurisdiction of the Court of Probate in respect to the grant and revocation of probate or administration, in case of any contention in relation thereto. Decree of judge of county court to be transmitted to district registrar, and in compliance probate or administration to issue from the district registry. Judge of county court to have the same power to decide testamentary causes and enforce judgments as in an ordinary action, and the affidavit of fact giving the court jurisdiction to be conclusive, and not impeached, unless the facts be disproved pending the cause. Appeal allowed to the Court of Probate upon any point of law, or the admission or rejection of evidence, and such appeal to be final. Not obligatory to apply to district registry or county court, but party may apply to the principal registry of the court of probate, but on case shown as respects property or abode of deceased, Probate Court may send the cause to the county court, and the court proceed as if applied to in the first instance. Rules to be framed to regulate proceedings of county courts in testamentary causes, s. 60.

By s. 61, where proceedings are taken for proving a will affecting real estate in solemn form, or for revoking probate, or any other matter, in which the validity of the will is disputed, the heir, and persons interested, or pretending an interest, in the estate, are to be cited, and may be admitted parties in the contention. When the will is proved, or its validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate. Heir or other persons interested need not be cited unless shown to the court the deceased had a beneficial interest in real estate, or if shown the will does not affect the real estate. If not cited, heir or others interested not affected by probate, decree, or order of the court. Probate or office copy to be evidence of the will in suits concerning the real estate. If validity of will be disputed, ten days' notice before trial to be given to opposing party, and within four days such party to give notice that the validity is disputed. In case of dispute court or judge to decide which party liable to costs.

*Deposit of Wills, Copies, Fees.*—By s. 66, one place of deposit in London or Middlesex for all the original wills brought into court, or of which probate or administration has been granted, and of copies of all wills the originals of which are preserved in the district registries. Judge to cause calendars to be made from time to time of probates and administrations in the principal registry, and in the district registries, and such calendars to be printed. A copy of every calendar to be sent to the district registries, to the Dublin Prerogative Court, and Edinburgh Commission. Inspection of any number of calendars to be allowed on the payment of a shilling fee for each search.



Pending a suit touching validity of will, an administrator may be appointed by the Court of Probate; administrator to be receiver of real estate, s. 70.

After grant of administration no person to have power to sue as executor. Revocation of temporary grants not to prejudice actions and payments under revoked probate or administration. Rights of executor renouncing probate to cease, as if he had not been named in the will. Persons to whom grant of administrations have been committed to give bond, s. 81. Bond to be in a penalty double the amount of the estate and effects of the deceased sworn. Power given to judges whose jurisdiction is closed by the Act to deliver written judgments in causes standing for judgment. Judges of ecclesiastical courts and others to transmit wills, &c., to principal registry, or district registry, under penalty of £100 and loss of compensation.

By s. 91, one or more depositories to be provided for the safe custody of the wills of *living persons*, on the payment of such fees, and under such regulations, as the judge of Court of Probate may direct. Registrars of the court to deliver copies of wills to the Commissioners of Inland Revenue. Fees to be taken to be settled by rules; fees to be recovered by a stamp denoting amount of fee. Remaining sections to s. 119, relate to salaries, compensations, and surrender of estates of Doctors' Commons.

#### DIVORCE COURT AND NEW MARRIAGE LAWS.

The Act of last session pertaining to these subjects, is not less important than the preceding Act, and like it, creates a new jurisdiction apart from the ecclesiastical courts. Besides establishing a court with exclusive authority in matrimonial causes, and abolishing former circuitry in the procedure for a divorce, the 20 & 21 V. c. 85, makes other vital changes. In lieu of an action for criminal conversation, by way of equivalent for the husband's wrong, the adulterer is made co-respondent in the suit and liable for costs; and in certain cases, for a provision on behalf of the family of the injured party. Previously the wife had no redress in case of adultery by the husband, unless accompanied with aggravating circumstances—as the seduction of her own sister; but the new Act places the wife on nearly the same footing of legal equality as the husband. In addition, the wife has obtained valuable concessions when deserted by the husband, especially in the protection from his gripe of her industry, or any earnings or savings which may accrue to her, pending his desertion. These and other amendments will more fully appear in the subjoined analysis of the statute. The commencement of the Act, like the Probate Court Act, is fixed to be on or after January 1, 1858, by order of council, one month's previous notice being given.

*Court of Divorce.*—After the Act comes into force, all jurisdic-

tion in respect of suits for divorce, nullity of marriage, restitution of conjugal rights, and other matrimonial matters—except marriage licences—to be exercised by the new court, composed of the Lord Chancellor, the Chief Justices, and the Chief Baron of the Court of Exchequer, the senior Puisne Judge of each of the three superior courts, and the Judge of the Court of Probate. Judge of the Court of Probate is judge in ordinary, and may exercise the whole authority of the court, and alone, or with one or more of the judges of the Divorce Court, determine all matters arising, except petitions for dissolving marriage, applications for new trials of issues before a jury, bills of exceptions, and special cases. Petitions for a dissolution of marriage and applications for new trials, must be determined by three or more of the judges, of whom the judge of Probate Court is one. In the absence of the judge ordinary, the Lord Chancellor to appoint temporary substitute. Pending matrimonial proceedings in ecclesiastical courts to be transferred to the new court. Sittings of the court to be in London or Middlesex, or elsewhere appointed by the crown. Advocates and proctors of the ecclesiastical courts, and barristers, solicitors, and attorneys of the superior courts, entitled to practise with the same precedence as they have in the Judicial Committee of Privy Council, s. 1-15.

*Judicial Separation and Conjugal Rights.*—By s. 16, a sentence of “Judicial Separation” is to have the effect of a divorce *à mensa et thoro*, and may be obtained either by the husband or wife, on the ground of adultery, cruelty, or desertion without cause, for two years and upwards.

Upon any one of these grounds, application may be made for restitution of conjugal rights or judicial separation by petition to the court, or to any judge at the assize held for the county in which the husband and wife reside or last resided together; and the judge may determine such petition according to the rules made under the Act. The court or judge being satisfied of the truth of the allegations of the petition, and no legal ground existing why the same should not be granted, may decree a restitution of conjugal rights, or a judicial separation; and, if the application is by the wife, may make any order for alimony which shall be deemed just. If the petition be presented to a judge of assize, he may refer it to any queen's counsel or serjeant at law named in the commission of assize, or *nisi prius*; and such counsel or serjeant is invested with all the powers of the judge for deciding the matter of the petition. The judge or person nominated by him may avail himself of the services and the powers of the court of assize, same as in the determination of assize causes, and may also exercise the power of the Divorce Court, touching the custody, maintenance, and education of the children. Every order made by the judge or his nominee may, on application of the petitioner, be entered and made an order of the court, and have the same effect, and

be similarly enforced. Order so entered, may be reviewed and either altered or reversed on appeal to the judge ordinary, but not to stay intermediate execution of the order, unless the judge so direct; if appeal be dismissed, appellant to pay full costs incurred, s. 17-20.

*Application of Wife for Protection.*—By s. 21, a wife deserted by her husband may, at any time after desertion, if resident within the metropolitan district, apply to a police magistrate, or, if resident in the country, to justices in petty sessions, or, in either case, to the court for an order to protect any money or property she may procure by her own lawful industry, and property of which she may become possessed after such desertion, against her husband, or his creditors, or any person claiming under him. The magistrate, justices, or court, if satisfied of the fact of such desertion, and that it was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may give to the wife an order protecting her earnings and property acquired from the commencement of such desertion, from her husband, and all creditors or persons claiming under him; and such earnings and property shall belong to the wife as if a *feme sole*.

Such protective order, if made by police justice or justices of session, must be entered within ten days with the registrar of the county court in whose jurisdiction the wife is resident; and the husband, creditor, or person claiming under him, may apply to the court, or the magistrate, or justices, for the discharge of the order. If the husband, creditor, or person claiming seize or continue to hold any property of the wife after notice of protecting order, he is liable to be sued by the wife to restore the specific property, and also a sum double its value. During the continuance of the protective order, the wife is deemed to have been, while deserted, in all respects, with regard to property and contracts, suing and being sued, as she would be under the Act if she had obtained a decree of judicial separation.

By s. 22, court to act on principles and rules of the ecclesiastical courts, subject to the provisions of the Act and its rules. A decree of separation obtained during the absence of husband or wife may be reversed, on the ground that there was reasonable ground for desertion; but such reversal not to prejudice the rights of third parties in respect of the debts or contracts of the wife between sentence of separation and reversal. Where alimony has been decreed, the court may direct payment of it either to the wife or her trustee. In case of judicial separation the wife to be considered a *feme sole* with respect to all property she may acquire, and if she die intestate, the same must go as if the husband was dead. If the wife again cohabit with her husband all the property she may be entitled to at the time of cohabitation to be held to her separate use, subject, however, to

any agreement in writing made between herself and husband whilst separate. If the alimony, payable by the husband during judicial separation, is not duly paid by him, he is liable for necessaries supplied for her use. Nothing to prevent, during separation, the wife joining the husband in the exercise of any joint power given to them.

*Petition for dissolution of marriage.*—By s. 27 any husband may present a petition to the court, praying that his marriage may be dissolved, on the ground that his wife, since the celebration of it, has been guilty of adultery; or the wife may present a petition to the court, praying that her marriage may be dissolved on the ground, that since the celebration of it, the husband has been guilty of incestuous adultery, or of bigamy with adultery, or of sodomy, bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *à mensa et thoro*, or of adultery coupled with desertion without reasonable excuse for two years or upwards. Such petition, either by husband or wife, must state as distinctly as the nature of the case permits the facts upon which the claim to have the marriage dissolved is founded. Incestuous adultery the Act explains to mean adultery committed by the husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage, by reason of her being within the prohibited degrees of consanguinity or affinity; and bigamy is taken to mean the marriage of any person being married to another during the life of the former husband or wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

By s. 28, upon the petition of the husband, the adulterer to be made a co-respondent to the petition, unless on special grounds to be allowed by the court; and on the petition of the wife, if the court think fit, the person with whom the husband is alleged to have committed adultery to be a co-respondent. The petitioning parties, or either of them, may insist on having the contested facts tried by a jury. Upon the petition the court to be satisfied, so far as reasonable, not only as to the facts alleged, but also whether or no the petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same: it shall further inquire into any counter-charges which may be made against the petitioner, s. 29. In any of these cases the petition will be dismissed, or if presented or prosecuted in collusion with either of the respondents. If satisfied, the court to pronounce a decree for dissolving the marriage, but the court not bound to decree a dissolution, if it find the petitioner has during marriage been guilty of adultery, or of unreasonable delay in presenting or prosecuting the petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated from the other party prior to the adultery

complained of, and without reasonable excuse, or of such wilful neglect or misconduct as conduced to the adultery. On the decree the court to order the husband to secure to the wife either a gross sum of money, or annual payment during her life, proportioned to her fortune, if any, and the husband's ability, a conveyancing counsel of the court preparing the deed, s. 31, 32.

*Damages for Adultery.*—By s. 33, any husband, either in a petition for a dissolution of marriage or separation, or in a petition *limited to the latter object only*, may claim damages from any person, on the ground of his having committed adultery with his wife, and such petition be served on the alleged adulterer and the wife, unless the court dissent from such service, or direct the substitution of some other service. Claim for damages by the petition to be heard and tried on the same principle and manner as actions for criminal conversation are now tried in courts of common law. Damages to be recovered to be ascertained by the verdict of a jury, though either or neither of the respondents may appear. After verdict the court to direct in what manner damages shall be paid or applied, whether the whole or part shall be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife.

By s. 34, when in any petition by a husband the alleged adulterer is made a co-respondent, and the adultery established, the court to order the adulterer to pay the whole or any part of the costs of the proceedings.

By s. 35, in any proceeding for obtaining a judicial separation or decree of nullity of marriage, and on any petition for dissolving a marriage, the court, before making its final decree, may make interim orders with respect to the custody, maintenance, and education of the children, the marriage of whose parents is the subject of the proceeding, and may direct the children to be placed under the protection of the Court of Chancery.

*Trial by Jury.*—In questions of fact court may direct the truth to be determined before itself, or before any one or more of the judges of the court by the verdict of a special or common jury. Jury to be summoned as in the common law courts; jurors to have same qualifications, same duties and liabilities as in the superior common law courts, with like right of challenge in suitors. Questions to be tried by the jury to be reduced to writing. Judge to have same powers as at *nisi prius*. Bill of exceptions, special verdict, and special case allowed. Court may direct issues to be tried in any court of common law, either before a judge of assize in any county, or at the sittings in London or Middlesex, and either by a common or special jury in like manner as is now done by Court of Chancery, s. 40.

By s. 41, affidavit to be filed in support of any petition for

decree for nullity of marriage, judicial separation, dissolution of marriage, or in suit of jactitation of marriage. Affidavit also to state that there is not any collusion or connivance between the deponent and the other party to the marriage.

By s. 43, on the hearing of any petition, the court may order the attendance of the petitioner, and examine him or her, or cross-examine on oath; but the petitioner not bound to answer any question tending to show that he or she has been guilty of adultery.

On a sentence of divorce or judicial separation for adultery of the wife, if it appear the wife is entitled to any property in possession or reversion, the court may order a settlement of such property for the benefit of the innocent party and the children of the marriage, or either or any of them. Sections 46 to 54 relate to mode of taking evidence, commissions for examination of witnesses abroad, fees, and rules of procedure.

*Appeals and Remarriage.*—By s. 55, either party dissatisfied with any decision which the judge ordinary alone may decide, may, within three calendar months after, appeal to the full court, whose decision is final. By s. 56, either party dissatisfied with the decision of a full court on any petition for the dissolution of a marriage, may, within three months after, appeal to the House of Lords, if sitting, or if not sitting, within fourteen days after its meeting. On hearing the appeal the Lords may either dismiss it, or reverse the decree, or remit the case to the court, to be dealt with as the Lords direct.

When the time limited for appeals has expired, and no appeal has been presented, or when any appeal has been dismissed, or when in the result of any appeal the marriage is declared to be dissolved, then, "but not sooner," the respective parties may marry again, as if the prior marriage had been dissolved *by death*. But no person in holy orders of the United Church of England and Ireland can be compelled to marry any person whose former marriage has been dissolved on the ground of his or her adultery; nor is he liable to any suit or censure for such refusal. If, however, any minister of the Church refuse to solemnize such marriage, any other minister of the Church in holy orders entitled to officiate within the diocese in which the church or chapel of the refusing minister is situate, may perform therein the marriage service.

Section 59 provides that, after the Act comes into operation, no action for *crim. con.* shall be maintainable in England. Remaining sections to s. 68 are not of public interest, referring to stamp fees, expenses of court, compensations, transfer of records, rules, and providing that a yearly account of fees be laid before Parliament.

#### REVERSIONARY INTERESTS OF MARRIED WOMEN.

By 20 & 21 V. c. 57, after December 31, 1857, any married

woman may, by deed, dispose of every future or reversionary interest, whether vested or contingent, of such married woman, or her husband in her right, in any personal estate whatsoever to which she shall be entitled under any instrument made after the said date (except such a settlement as after mentioned), and also release powers as fully and effectually as she could do if she were a *feme sole*, and also release her right to a settlement out of any personal estate to which she, or her husband in her right, may be entitled in possession under any such instrument, save that no such disposition or release shall be valid unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as directed by 3 & 4 W. 4, c. 74, or in Ireland by 4 & 5 W. 4, c. 92; but nothing herein contained shall extend to any reversionary interest to which she shall become entitled by virtue of any deed by which she shall be restrained from alienating or affecting the same. Powers of disposition given by this Act not to interfere with any other power. Nor to extend to settlements of married women upon marriage, s. 3, 4.

#### MUNICIPAL CORPORATIONS.

By 20 & 21 V. c. 50, the trustees for paying, lighting, &c., under the 5 & 6 W. 4, c. 76, in any borough named in the schedules of that Act, or to which a charter of incorporation has since been granted, may, at a meeting called for the purpose, transfer all powers, property, and liabilities to the body corporate of such boroughs, but not to extend to Cambridge without consent of the chancellor, master, and scholars of the university. But no transfer is to be made in any borough without a resolution of the borough council, s. 3. By s. 5, all duties imposed on clerks of cities and boroughs by 3 G. 4, c. 46, to be performed by clerks of the peace. In boroughs consisting of more than one parish, in case the burgess roll for any parish be not made out for any year, previous burgess roll to continue in force for such parish. By s. 7, overseers of the poor to make out burgess roll on or before September 1st, in lieu of September 5th (p. 128), in every year.

#### JOINT STOCK COMPANIES ACT, 1856.

The Joint Stock Companies Act of 1856 (p. 131) to be called the "Principal Act," and to be construed as one Act with the 20 & 21 V. c. 14, by which it was last session amended. By s. 3 of the new Act, s. 4 of the Principal Act is repealed, and in lieu it is enacted that.

"If from the date of the Act (July 13, 1857) more than twenty persons carry on, in partnership, any trade or business, having for its object the procurement of gain to the partnership, then,

unless such persons are included within one or more of the classes following, that is to say—1, are registered as a company under the Principal Act; 2, are a company incorporated or otherwise legally constituted by or in pursuance of some Act of Parliament, royal charter, or letters patent; or, 3, are engaged in working mines within and subject to the jurisdiction of the Stannaries; each one of the persons so carrying on business in partnership together contrary to this provision shall be severally liable for the payment of the whole debts of the partnership, and may be sued for the same without the joinder in the action or suit of any other member of the partnership. The registrar on payment of 5s. to issue a certificate of incorporation of any company to any person applying, and such certificate to be admissible in evidence in like manner as the certificate of incorporation directed to be given by the Principal Act.

By s. 5, any limited company may by special resolution convert into stock any shares which have been fully paid up. Upon such conversion being made all the provisions of the Principal Act or the new Act which require or imply that the capital of the company is divided into shares of any fixed amount, distinguished by numbers, and all the provisions that require the company to keep a register of shareholders, or to make an annual list of shareholders in the register, to cease as to so much of the capital as has been so converted into stock. Any company that has converted any portion of its capital into stock to give notice of conversion, specifying the shares converted, to the registrar of joint stock companies, within fifteen days from the date of the last of the meetings at which the resolution was passed by which such conversion was authorised, and the registrar record the fact of such conversion: penalty for neglect of notice, £5 per day. Company that has converted any portion of capital into stock to keep at the registered office of the company a register of the names and addresses of the persons for the time being entitled to such stock, and such register to be open to inspection in the manner and subject to the penalties of the Principal Act. Omission or wrong entry of name to be corrected as directed by s. 21 of Principal Act. Court to decide on disputed questions according to 25th section. If company omit to forward copies of the memorandum of association and articles of association to shareholders, in pursuance of s. 27 of Principal Act, penalty not exceeding £1 for each offence.

By s. 11-13, where an order has been made for winding up a company, power given to arrest shareholder about to abscond, or to remove or conceal any of his property. Arrested shareholder may apply to the court having jurisdiction in the winding up, for his discharge. Calls under third part of Principal Act to be a specialty debt due from contributory. Sections 14-27 refer to appointment of official liquidators, extension of their



power to compromise debts, repeal s. 107 of Principal Act, and the non-repeal of Limited Liability Act of 1855.

By s. 28, if any company required to register under the Joint Stock Companies Acts, omit to register on or before November 2, 1857, then, from such day until the day on which such company is registered under the Joint Stock Companies Acts, 1856, 1857, the following consequences shall ensue:—1, the company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit at either; 2, no dividend shall be payable; 3, each director or manager shall for each day during which the company is in default incur a penalty of £5, and such penalty may be recovered by any person.

By s. 29, every company consisting of seven or more shareholders, having a capital of fixed amount, divided into shares, also of fixed amount, duly constituted by law prior to the passing of this Act, and not being a company required to be registered, may, upon compliance with the provisions of the Joint Stock Companies Acts, 1856, 1857, register itself as a company under such Acts, with or without limited liability; subject to this proviso, that no company shall be registered as a limited company unless either the liability of the shareholders is already limited to the amount of the unpaid calls on their shares, or an assent to its being so registered has been given by three-fourths in number and value of such of its shareholders as may have been present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for that purpose.

By s. 30, where an existing company has converted capital into stock, such company shall, as to the capital so converted, instead of delivering to the registrar the statement of capital and shares, deliver to the registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six days before the day of registration. List of shareholders required by s. 111 of Principal Act need not be made up to the day of the registration of the company, but may be made up to any day not more than six days before day of registration. No fees to be charged in respect of the registration under the Joint Stock Companies Acts, of any company existing at the date of this Act, in cases where such company is not registered as a limited company, or where, previously to its being registered as a limited company, the liability of the shareholders was limited by some other Act of Parliament, or by letters patent. Section 33 and last refers to grant of certificate of registration, and effect thereof.

A second Act of last session, the 20 & 21 V. c. 80. further amends the Joint Stock Act of 1856, by enacting, with a pro-

viso, that the Acts of 1856 and 1857 shall not be deemed to repeal 7 & 8 V. c. 110, as respects insurance companies (p 129).

## BANKING COMPANIES ACTS.

By 20 & 21 V. c. 49, the Joint Stock Companies Acts of 1856 and 1857 are deemed to be incorporated with the present Act, which repeals s. 2 of 19 & 20 V. c. 47, so far as relates to persons associated for banking, subject to the proviso that no existing or future banking company shall be registered as a limited company.

By s. 4, every banking company, consisting of seven or more persons, and formed under former Acts, to be registered on or before January 1, 1858, under present Act. Failing so to register, the following consequences to ensue :—1, the company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit at either; 2, no dividend shall be payable to any shareholder in such company; 3, each director or manager of the company shall for each day during which the company is in default incur a penalty of £5, and such penalty may be recovered by any person whether a shareholder or not in the company.

By s. 6, any banking company, consisting of seven or more persons, having a capital of fixed amount, and divided into shares of fixed amount, legally carrying on the business of banking previously to this Act, and not being a company hereby required to be registered, may at any time, with the assent of a majority of such of its shareholders as may have been present in person, or in cases where proxies are allowed, by proxy, at some general meeting summoned for the purpose, register itself as a company other than a limited company under this Act, and when so registered all such provisions contained in any Act of Parliament, letters patent, or deed of settlement regulating the company, as are inconsistent with the Joint Stock Companies Acts, 1856, 1857, or with this Act, shall no longer apply to the company so registered. Registration not to take away or affect any powers previously enjoyed by such company of banking, issuing notes payable on demand, or of doing any other thing. No fees to be payable in respect of registration by any existing banking company. Registration under this Act not to affect obligations incurred previously to registration. Section 11, saving of liabilities of persons holding shares before registration. Sections 10-12 repeal certain Acts as to future banking companies.

By s. 13, in the formation of new banking companies, seven or more persons associated for the purpose of banking, may register themselves as a company other than a limited company, subject to this condition, that the shares into which the capital of the company is divided shall not be of less amount than £100

each ; but not more than ten persons, unless registered as a company, to form themselves into a partnership for the purpose of banking, or if so formed carry on the business of banking. No appointment of inspectors to examine into the affairs of any banking company to be made by the Board of Trade, except upon the application of one-third at the least in number and value of the shareholders in such company. Sections 16-19 refer to transfer of trust property to company, to liabilities of banking companies not registered as such, and to exemption of certain existing companies.

#### FRAUDULENT TRUSTEES, BANKERS, AND OTHERS.

By 20 & 21 V. c. 54, if any person being a trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same, or with such intent dispose of or destroy such property, he is guilty of a misdemeanor. Any banker, merchant, broker, attorney, or agent, being intrusted for safe custody with the property of any other person, who shall fraudulently sell, negotiate, transfer, pledge or convert such property to his own use is guilty of a misdemeanor. Persons under powers of attorney fraudulently selling property similarly guilty. Bailees fraudulently converting property to their own use guilty of larceny. Directors, members, or officers of any body corporate or public company fraudulently appropriating property, or keeping fraudulent accounts, or wilfully destroying books, papers, writing, or securities, or who shall make, circulate, or publish, or concur in any written statement or account which they know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor, or to induce any person to become a shareholder or partner therein, or to enter into any security, are guilty of a misdemeanor. Persons are equally guilty in receiving property fraudulently disposed of, knowing the same to have been so.

By s. 10, every person found guilty of a misdemeanor under this Act to be liable to be kept in penal servitude for the term of three years, or to suffer such other punishment, by imprisonment for not more than two years, with or without hard labour, or by fine, as the court shall award.

Sections 11-15 refer to evidence, to the sanction of the attorney-general or some judge, to prosecutions, and to costs, which are to be allowed as in cases of felony. By s. 16, misdemeanors under the Act are not triable at quarter sessions. The Act does not extend to Scotland.

#### ANNUAL MUTINY ACT.

To the provisions relative to mutinies and military exemptions, inserted p. 271-2, may be added s. 25 of 20 V. c. 13, by which

the power of inflicting corporal punishment is limited to fifty lashes, to which solitary confinement may be added. Habitual drunkenness punishable by a forfeiture of part pay. Officers destroying game or fish in or near where they may be quartered in the United Kingdom, without leave from those entitled to grant leave, to forfeit £5, s. 95.

#### ABOLITION OF SENTENCES OF TRANSPORTATION.

By 20 & 21 V. c. 3, sentences of transportation are abolished, and in lieu of such (p. 441), sentences of penal servitude of equal duration to be substituted. Provisions of the Acts concerning transported offenders to apply to offenders under penal servitude. Persons under sentence of penal servitude may, during term of their sentence, be conveyed to any place beyond seas to which offenders under sentence of transportation might be conveyed, and the Acts relative to transports to be applicable to them. Magistrates may recommit convicts whose licences are revoked to any convict prison.

#### IMPROVEMENT OF SUMMARY PROCEEDINGS.

The 20 & 21 V. c. 43, is intended to obtain the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of peace, police, or other stipendiary magistrate. By s. 2, one or more justices, on application of any party aggrieved by their decision, as being erroneous in point of law, may, within three days after, apply to them to state a case for the opinion of a superior court; the applicant to transmit such case to the superior court, and give security to abide costs. Justices may refuse a case, if frivolous; but Court of Queen's Bench may order a case to be stated. Power of superior court may be exercised by a judge at chambers, s. 8.

#### APPOINTMENT OF CHIEF CONSTABLES.

By 20 V. c. 2, power is given to justices to appoint a person to be chief constable, although he may hold a similar appointment in an adjoining county (p. 96).

#### BURIALS AND BOARD OF HEALTH.

The Burial Acts (p. 502) are amended by 20 & 21 V. c. 81. Approval of a majority of vestries of parishes sufficient for acts done by burial boards. Joint burial boards may be dissolved. Burial boards may provide more than one burial ground. Local board of health may, by Order in Council, be constituted a burial board. Burial board may be established for a district not maintaining its own poor, and which has had no separate burial ground. No wall or fence required between the consecrated and unconsecrated portions of burial ground; boundary marks of

stone or iron to be sufficient. Exemption from toll extended to funerals in burial grounds provided for the parish, though out of its limits.

The 20 & 21 V. c. 35, amends the Metropolitan Act (p. 502), in relation to fees payable to incumbents and churchwardens.

By 20 & 21 V. c. 38, the General Board of Health (p. 497) is continued. By s. 2, no salary to be payable to a president of the board holding, at the time of his appointment, any office of profit under the crown.

#### INDUSTRIAL AND REFORMATORY SCHOOLS.

This Act was passed to make better provision for the care and education of vagrant, destitute, and disorderly children, and for the extension of industrial schools (p. 442). Child under the Act means any boy or girl who in the opinion of the justices is above seven and under fourteen years of age. The Committee of Privy Council on Education may certify any industrial school to be under this Act, but not also under 17 & 18 V. c. 86. Inspector to report annually, and if committee dissatisfied with state of the school, certificate may be withdrawn. Book to be kept in which religious denomination of children is described, and certain hours to be fixed for visits of clergymen, s. 10. No child to be detained beyond fifteen years of age. Parent may be summoned, and ordered to pay according to his ability.

The 20 & 21 V. c. 55, promotes the establishment and extension of reformatory schools, by empowering the justices of a county or council of a borough to grant money in aid of them. But money not to be granted to schools already established unless certified. Contribution by parents to the maintenance of offenders in a reformatory school to be enforced by summons and inquiry into their ability. By s. 13, further provision is made for care of juvenile offenders when discharged from school.

#### LOAN SOCIETIES.

The 3 & 4 V. c. 110 (p. 249), which had expired, is revived and continued by 20 & 21 V. c. 41, to August 1, 1858, so that societies established under it be enabled to wind up their affairs after the expiration of such Act. After 3 & 4 V. c. 110, expires, rules certified under it, and the securities taken up, to continue in force until assets divided, but no new loan to be made.

#### INCOME TAX AND INSURANCE.

By 20 V. c. 6, the reduced rate of 7*d.* in the pound to be charged in respect of property, profits, and gains, from April 5, 1857.

The time is extended by 20 & 21 V. c. 5, for continuing the

abatement of income tax on insurance on lives to April 6, 1860.

#### RACEHORSE DUTY.

The payment of this duty (p. 578) is regulated by 20 V. c. 16, and must be paid by the owner or trainer, or person having charge of horse to the receiver previously to the starting of a racehorse. Receiver to give receipt for duty in printed form, fill up counterfoils, and be responsible for those supplied to him. Penalty on receiver for any neglect of duty, £50.

#### CUSTOMS AND EXCISE DUTIES.

The customs duty on tea from April 5, 1857, to April 5, 1858, to be 1s. 5d. per pound. By s. 2, alterations are made in the sugar duties, and the duties on comfits, cherries, succades, &c. By 20 & 21 V. c. 62, a duty of 6d. is imposed on each felt hat imported, and on lucifers, vestas of wax per 1000, duty ½d. Other clauses refer to warehousing of tobacco, and the continuance of existing warehouses in lieu of any provided by Commissioners of Customs under 16 & 17 V. c. 107. By 20 & 21 V. c. 61, new schedules of duties on sugar and confectionery are provided.

#### SUPERANNUATION ACT.

The 27th section of this Act, the 4 & 5 W. 4, c. 24, which consolidates the law on superannuations made to civil officers in Her Majesty's service, is repealed by 20 & 21 V. c. 37, so far as it relates to the abatement to be made in the salaries of civil officers of the crown who have taken office since August 4, 1829.

#### ABOLITION OF SOUND DUES.

The 20 & 21 V. c. 12, was passed to enable Her Majesty to carry into effect a convention concluded by Her Majesty and other powers with the King of Denmark for the abolition of tolls levied on vessels and cargoes passing the Sound, and for the reduction of duties on goods in transit by lines of communication connecting the North Sea and the Elbe with the Baltic. The total sum contracted to be paid to Denmark is thirty-five millions of rigs dollars, of which the proportionate share of Britain is 10,126,855 rigs dollars, or £1,125,206 sterling.

#### DOWRY OF THE PRINCESS ROYAL.

By 20 & 21 V. c. 2, Parliament enables Her Majesty to settle an annuity of £8000 on the Princess Royal for her life, to commence from the date of her marriage to Prince Frederick William of Prussia, and to be paid quarterly.

## OBSCENE BOOKS, PRINTS, AND ARTICLES.

Lord Campbell's Act, 20 & 21 V. c. 83, gives additional power for the suppression of the trade in such obscenities, by empowering any metropolitan police magistrate, or other stipendiary magistrate, or any two justices of the peace, upon complaint on oath, that the complainant believes that obscene books, papers, writings, prints, pictures, drawings, or other representations are kept in any house, shop, room, or other place within the magisterial limits, for the purpose of sale or distribution, exhibition for gain, lending upon hire, or being otherwise published for gain; complainant also to state that one or more articles of such character have been sold, exhibited, or lent, so as to satisfy the magistrate that the belief of complainant is well founded, and that the publication of such obscenity would be a misdemeanor. Upon such depositions a special warrant may be issued to police officer, with the necessary assistance, to enter in the day-time, and if need be, use force, by breaking open doors or otherwise, to search for and seize such obscenities, and carry them before a magistrate, who may summon the occupier to appear within seven days to show cause why such articles should not be destroyed; occupier or owner of the articles not appearing, the obscenities may be destroyed, except those necessary for sustaining ulterior proceedings. If the articles seized are not of the character described by the complainant, they are to be restored to the occupier. Tender of amends to bar any wrong proceeding under the Act, and notice of counter proceeding must be given in writing one calendar month previously. Appeal given to next general quarter sessions; appellant giving seven days' notice, and entering into recognizances to appear and prosecute the appeal.

## WORKHOUSES AND POOR LAWS.

The 5 & 6 W. 4, c. 69, makes provision for the sale or exchange of lands or houses belonging to any ecclesiastical corporation sole for sites for workhouses, or, in case such corporation sole is of unsound mind, the 20 & 21 V. c. 13, empowers the guardians or managers to petition the Lord Chancellor to execute. Certain consents to be obtained to the acquisition.

By 20 V. c. 9, all extra-parochial places where no poor rate is levied, to be parishes for the relief of the poor, and justices having jurisdiction to appoint overseers. Provisions for the inns of court and the charterhouse. Bishop may order banns to be published in extra-parochial places.

The 19 & 20 V. c. 47, for charging certain paupers on the union funds is continued by 20 V. c. 18.

## DRIVING CATTLE AND THE CATTLE MARKET ACT.

By a local Act the 21 G. 3, c. 67, and the 14 & 15 V. c. 61, the first for preventing mischief from cattle driving in the metropolis, and the Act of Victoria chiefly pertaining to the tolls of the New Cattle Market, are amended by 20 & 21 V. c. 135.

## ALLEYNE'S DULWICH COLLEGE.

The scheme of the Archbishop of Canterbury for the government of this foundation having been approved and modified by the Charity Commissioners, is confirmed and set out in schedule to 20 & 21 V. c. 84. Archbishop to continue visitor. Nineteen governors to have the control of the college and estates from December 31, 1857. Eleven of the governors to be appointed by the Court of Chancery, and eight to be elected for seven years, two by each of the vestries of the four parishes of St. Botolph without Bishopsgate, St. Saviour, Southwark, St. Luke, Middlesex, and St. Giles, Camberwell. One of the non-elective governors to be styled the "Dulwich Governor," and to be a resident inhabitant of Dulwich. Governors to frame rules and regulations. Three-fourths of net income to go to educational branch of the charity, and one-fourth to eleemosynary branch. Two schools to be established, an upper and lower school; the upper school to be for foundation scholars and day boys. Head-master and under-master to be graduates of the universities; salary of former £450, the latter £250. Foundation scholars at the upper school to belong to the four parishes, be elected by them, and clothed and maintained by the charity. Foundation scholars at the lower school to be appointed by the governors, must be orphans, or in default of orphans, poor children belonging to the four parishes. Schools to be subject to inspection by Her Majesty's inspectors of schools. Remainder of scheme refers chiefly to exhibitions and scholarships, to the preservation of the Bourgeois picture gallery, to Whitfield's gift, and Allen's girls' school.





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